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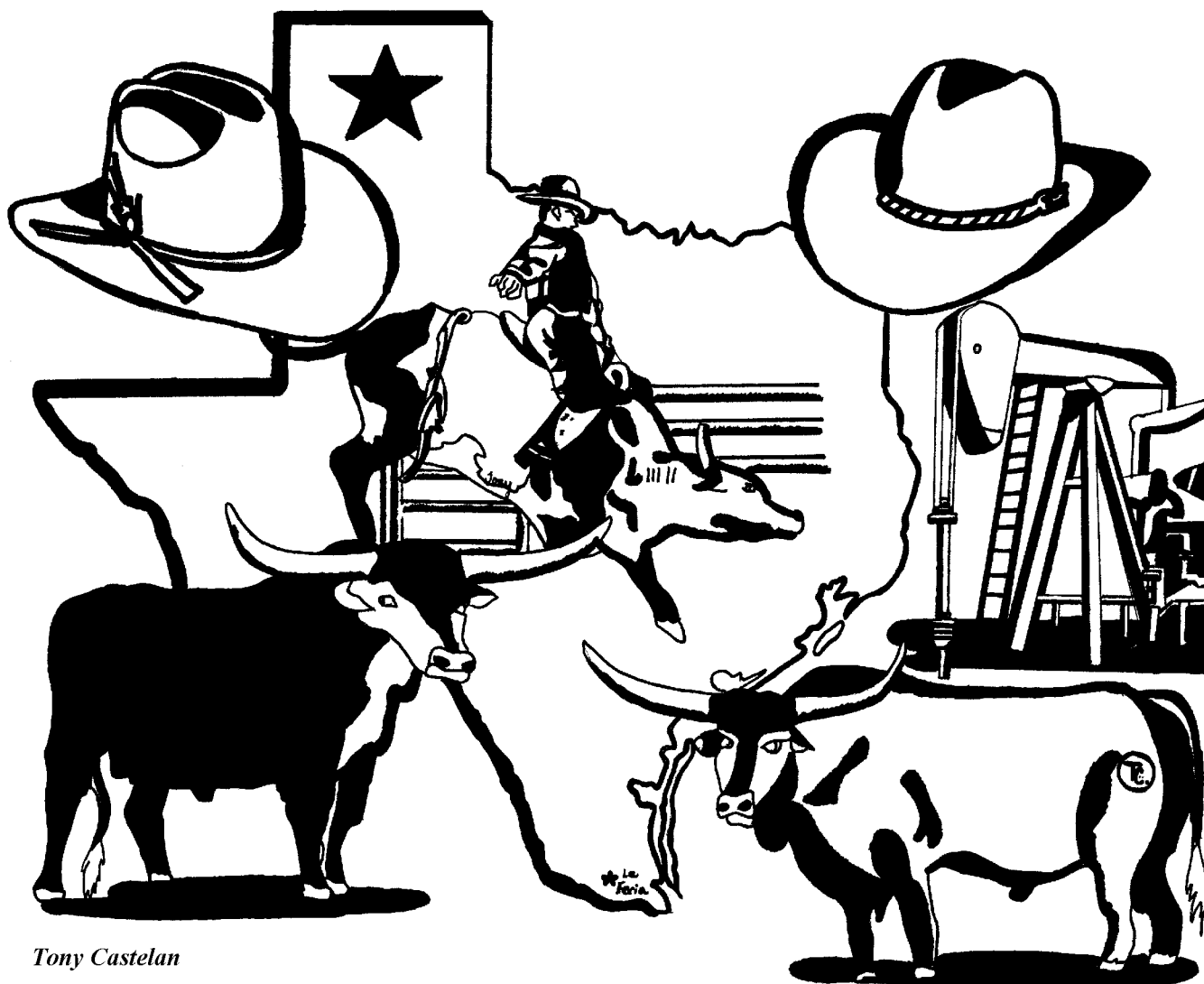
# TEXAS REGISTER

*Volume 30 Number 15*

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*Pages 2151-2340*

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*Tony Castelan*

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

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a section of the  
Office of the Secretary of State  
P.O. Box 13824  
Austin, TX 78711-3824  
(800) 226-7199  
(512) 463-5561  
FAX (512) 463-5569  
<http://www.sos.state.tx.us>  
[subadmin@sos.state.tx.us](mailto:subadmin@sos.state.tx.us)

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# THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

## Executive Order

### RP 42

*Relating to the creation of the Aging Texas Well advisory committee and plan.*

WHEREAS, the State of Texas values older Texans and is committed to ensuring that all Texans age well with dignity, independence and opportunities to contribute to society; and

WHEREAS, Texas has 3.1 million people over the age of sixty, the fourth largest such population in the nation; and

WHEREAS, the elderly population represents an increasingly diverse and rapidly growing group as a result of increased longevity and the aging of the baby boom generation; and

WHEREAS, the Aging Texas Well initiative was first created in 1997 to encourage Texans to prepare individually for aging in all aspects of life and to ensure that state and local social services infrastructure facilitates aging well throughout the life span; and

WHEREAS, the changing demographics of the state will create the need for comprehensive policy changes in response to: growing numbers of informal caregivers for older Texans, rapidly increasing costs associated with caring for those with chronic disease and disability, the need for providers with geriatric training, the aging of persons with mental retardation and developmental disabilities and their caregivers, and increasing numbers of older Texans with transportation and mobility needs; and

WHEREAS, recent federal initiatives such as the President's New Freedom Commission on Mental Health and the Medicare Modernization Act will also impact the state's ability to appropriately serve this population; and

WHEREAS, these demographic trends will create new and different demands on state services across all functions of state government, and will introduce new opportunities for economic and community growth while driving health and long-term care costs inexorably higher unless Texans emphasize healthy lifestyles that include physical activity and good nutrition; and

WHEREAS, local communities have a critical role in preparing for the future demographic changes by building capacity to support an aging population; and

WHEREAS, the White House Conference on Aging, scheduled for October 2005, provides an opportunity for states to further review and amend aging policies in their state;

NOW, THEREFORE, I, Rick Perry, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas as the Chief Executive Officer, do hereby order the following:

*Advisory Committee.* The current Department of Aging and Disability Services Aging Resource Group shall be reconstituted as the Aging Texas Well Advisory Committee to advise the Department and to make

recommendations to state leadership on implementation of the Aging Texas Well initiative.

*Aging Texas Well Plan.* With the advice of the Aging Texas Well Advisory Committee, the Department of Aging and Disability Services shall create and disseminate a comprehensive and effective working plan to identify and discuss aging policy issues, guide state government readiness and promote increased community preparedness for an aging Texas. The Texas Department of Aging and Disability Services shall biannually update the plan and shall evaluate and report on its implementation.

*Review of State Policy.* With the advice of the Aging Texas Well Advisory Committee, the Texas Department of Aging and Disability Services shall review and/or comment on state policies, concentrating on current critical trends including but not limited to:

1. Improving services and supports for informal caregivers;
2. Promoting ways to increase evidence-based disability and disease prevention activities;
3. Increasing the recruitment and retention of health care providers trained in geriatrics;
4. Improving the provision of services and supports to persons with developmental disabilities and mental retardation who are aging;
5. Reviewing options to expand the mobility of older adults through affordable, accessible and integrated transportation services;
6. Improving the provision of behavioral health services and supports to older persons; and
7. Reviewing federal changes in health care policy, particularly the impact of the Medicare D prescription drug benefit, on the ability of older Texans to access medications.

*State Agency Readiness:* The Texas Department of Aging and Disability Services shall lead a planning effort to ensure the readiness of all Texas state agencies to serve an aging population by identifying issues and current initiatives, future needs, action steps, and methods of performance evaluation. The effort shall advance an intergenerational approach to policies, programs, and services to address the needs of Texans across the lifespan.

*Texercise:* The Department of Aging and Disability Services, Department of State Health Services, Governor's Advisory Council on Physical Fitness, and other appropriate state and community organizations shall continue to promote and expand the internationally-recognized Texercise program as a means to ensure healthy lifestyles in older Texans.

*Local Community Preparedness.* The Department of Aging and Disability Services shall work with public and private community partners, including state and local governments, to build capacity to serve a growing aging population through partnership development and action planning using formal community assessment processes.

*Report of Compliance.* The Aging Texas Well Plan shall serve as a report on implementation of this order.

*Full Cooperation.* All affected agencies and other public entities shall cooperate fully with the Department of Aging and Disability Services in the implementation of this order.

This executive order supersedes all previous orders in conflict or inconsistent with its terms and shall remain in effect and in full force until modified, amended, rescinded, or superseded by me or by a succeeding Governor.

Given under my hand this the 1st day of April, 2005.

Rick Perry, Governor

TRD-200501425

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# THE ATTORNEY GENERAL

Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042, and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are

requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open records decisions are summarized for publication in the *Texas Register*. The attorney general responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the attorney general unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record. You may view copies of opinions at <http://www.oag.state.tx.us>. To request copies of opinions, please fax your request to (512) 462-0548 or call (512) 936-1730. To inquire about pending requests for opinions, phone (512) 463-2110.

## Request for Opinions

### RQ-0327-GA

#### Requestor:

The Honorable Jeri Yenne  
Criminal District Attorney  
Brazoria County  
111 East Locust Street  
Angleton, Texas 77515

Re: Retroactive application of municipal term limits provisions (Request No. 0327-GA)

**Briefs requested by April 30, 2005**

### RQ-0328-GA

#### Requestor:

The Honorable Mark Price  
Criminal District Attorney  
San Jacinto County  
#1 State Highway 150, Room 21  
Coldspring, Texas 77331

Re: Whether a county may repair a subdivision road, or neighborhood road, or a private road (Request No. 0328-GA)

**Briefs requested by April 30, 2005**

### RQ-0329-GA

#### Requestor:

The Honorable Mark Price  
Criminal District Attorney  
San Jacinto County  
#1 State Highway 150, Room 21  
Coldspring, Texas 77331

Re: Whether a county auditor may simultaneously serve as an accountant for a county emergency services district (Request No. 0329-GA)

**Briefs requested by April 30, 2005**

### RQ-0330-GA

#### Requestor:

The Honorable William Jennings  
Criminal District Attorney  
Gregg County  
101 East Methvin Street, Suite 333  
Longview, Texas 75601

Re: Whether the judge of the 307th District Court may participate in the management of the Gregg County Community Supervision and Corrections Department (Request No. 0330-GA)

**Briefs requested by April 30, 2005**

### RQ-0331-GA

#### Requestor:

The Honorable Tim Taylor  
Titus County Attorney  
Titus County Courthouse  
100 West First Street  
Mount Pleasant, Texas 75455

Re: Whether the Titus County Election Commission is subject to the Open Meetings Act, chapter 551, Government Code (Request No. 0331-GA)

**Briefs requested by April 30, 2005**

### RQ-0332-GA

#### Requestor:

The Honorable Jane Nelson  
Chair, Health and Human Services Committee  
Texas State Senate  
Post Office Box 12068  
Austin, Texas 78711

Re: Whether the legislature, in the absence of a constitutional amendment, may authorize the creation of county gaming districts to regulate local-option video lottery gaming (Request No. 0332-GA)

**Briefs requested by May 2, 2005**

*For further information, please access the website at [www.oag.state.tx.us](http://www.oag.state.tx.us) or call the Opinion Committee at (512) 463-2110.*

TRD-200501440

Nancy S. Fuller

Assistant Attorney General

Office of the Attorney General

Filed: April 5, 2005



**Opinions**

**Opinion No. GA-0314**

Mr. Raymund A. Paredes

Commissioner of Higher Education

Texas Higher Education Coordinating Board

Post Office Box 12788

Austin, Texas 78711

Re: Whether a junior college district's statutorily defined service area is extended when the district provides services outside that area (RQ-0280-GA)

**S U M M A R Y**

A junior college district's statutorily defined service area is not extended when it provides services outside that area. The fact that the Alvin Community College District provides services in prison units outside its Education Code section 130.163 service area does not extend its service area to include those locations.

**Opinion No. GA-0315**

The Honorable Robert E. Talton

Chair, Committee on Urban Affairs

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether a municipality that limits fees for police-initiated non-consent tows must comply with Transportation Code section 643.204 (RQ-0281-GA)

**S U M M A R Y**

Transportation Code section 643.204 requires a municipality that regulates nonconsent tow fees to establish a procedure by which a towing company may request that a towing fee study be performed. The City of Victoria, Code of Ordinances section 23-75 limits the maximum fee that a towing company can assess for police-initiated nonconsent tows. The City of Victoria's ordinance does not appear to regulate nonconsent tow fees. The ordinance is designed to create efficiencies for the city, and its narrow scope, which controls only a portion of the non-consent tow market, defeats the inference that its primary goal is to encourage a general policy rather than address a specific proprietary problem. Thus, Victoria is not impermissibly ignoring Transportation Code section 643.204.

*For further information, please access the website at [www.oag.state.tx.us](http://www.oag.state.tx.us) or call the Opinion Committee at (512) 463-2110.*

TRD-200501445

Nancy S. Fuller

Assistant Attorney General

Office of the Attorney General

Filed: April 6, 2005





# PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to

submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

**Symbols in proposed rule text.** Proposed new language is indicated by underlined text. ~~Square brackets and strikethrough~~ indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

## TITLE 10. COMMUNITY DEVELOPMENT

### PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

#### CHAPTER 80. MANUFACTURED HOUSING SUBCHAPTER G. STATEMENTS OF OWNERSHIP AND LOCATION

##### 10 TAC §80.201

The Manufactured Housing Division of the Texas Department of Housing and Community Affairs (the "Department") proposes amendments to §80.201 relating to issuance of Statements of Ownership and Location. The amendments are for clarification and to organize in a more logical manner.

Timothy K. Irvine, Executive Director of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs, has determined that for the first five-year period that these sections as proposed are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering these sections.

Mr. Irvine also has determined that for each year of the first five years the sections as proposed are in effect the public benefit as a result of enforcing the sections will be clarification of Statement of Ownership and Location procedures and records. There will be no economic effect on small businesses or micro-businesses as a result of enforcing these sections. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

The Department will conduct a hearing on the proposed rules on Tuesday, May 17, 2005 at 9:00 a.m. at the Austin Headquarters located in the Waller Creek Office Building at 507 Sabine, 4th Floor Boardroom, Austin, Texas 78701.

Comments may be submitted to Mr. Timothy K. Irvine, Executive Director of the Manufactured Housing Division, of the Texas Department of Housing and Community Affairs, P. O. Box 12489, Austin, Texas 78711-2489 or by e-mail to [tirvine@tdhca.state.tx.us](mailto:tirvine@tdhca.state.tx.us). The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under the Texas Manufactured Housing Standards Act, Occupations Code, Subtitle C, Chapter 1201, §1201.052, which provides the Department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and under Texas Government Code, Chapter 2306, §2306.603, which authorizes the director to adopt rules as necessary to administer and enforce the

manufactured housing program through the Manufactured Housing Division.

No other statute, code, or article is affected by the proposed amendments.

*§80.201. Issuance of Statements of Ownership and Location.*

(a) Application Requirements. In order to be deemed complete, an application for a Statement of Ownership and Location must include, as applicable: ~~[Initial Statements:]~~

~~{(1)}~~ The Department will issue an initial Statement of Ownership and Location within ten ~~(10)~~ working days after receipt of a complete application, accompanied by all documentation necessary to support the application.

~~{(2)}~~ In order to be deemed complete, an application for a Statement of Ownership and Location must include, as applicable:

(1) [(A)] A completed and fully executed Application for Statement of Ownership and Location on the department's~~[Department's]~~ prescribed form;

(2) [(B)] The required fee;

(3) [(C)] To record a lien for which the department does not have the owner's consent~~[If one or more liens are to be reflected on the Statement of Ownership and Location]~~, copies of documentation establishing the creation ~~[;]~~ and existence ~~[; and priority]~~ of each such lien;

(4) [(D)] If a manufactured home is relocated, satisfactory evidence that there are no property tax liens on the home or that provision has been made for them. Satisfactory evidence would include, but would not be limited to, evidence that the relocation was effected with a TxDOT approved move,~~[or]~~ a paid taxes certificate from the county tax assessor for the county where the home was located prior to the move, or an original, signed statement from a title company, lender, or escrow agent, executed by a person purporting to be its duly authorized officer or representative, that money sufficient to pay the taxes was being held by them and would be applied to the payment of those taxes ; and[-]

(5) If one or more existing liens are to be released, assigned, or foreclosed, appropriate supporting documentation;

(6) If an application for Statement of Ownership and Location indicates a change in ownership but no change in lien, supporting documentation that clearly establishes that the lienholder consented to that change;

(7) If a manufactured home is to be designated for use as a dwelling after the home has been designated for business use only or salvage, evidence of a satisfactory habitability inspection by the department.

(b) Right of Survivorship: If the survivorship election is taken, then the department will issue a new Statement of Ownership and Location to the surviving person(s) upon receipt of a copy of the death

certificate of the deceased person(s), and a properly executed application for Statement of Ownership and Location, and the applicable fee. [Revised Statements.]

{(1) The Department will issue a revised Statement of Ownership and Location within ten (10) working days after receipt of a complete application, accompanied by all documentation necessary to support the application.}

{(2) In order to be deemed complete, an application for a revised Statement of Ownership and Location must include, as applicable:}

{(A) A completed and fully executed Application for Statement of Ownership and Location on the Department's prescribed form;}

{(B) The required fee;}

{(C) If one or more liens are to be reflected on the Statement of Ownership and Location, copies of documentation establishing the creation, existence, and priority of each such lien;}

{(D) If one or more existing liens are to be released or transferred, appropriate supporting documentation, including a properly executed and completed release of lien form;}

{(E) If a manufactured home is to be designated for use as a dwelling after the home has been designated for business use only or salvage, evidence of a satisfactory habitability inspection by the Department, accompanied by the required fee;}

{(F) If a manufactured home is relocated, satisfactory evidence that there are no property tax liens on the home or that provision has been made for them. Satisfactory evidence would include but would not be limited to, evidence that the relocation was effected with a TxDOT approved move, a paid taxes certificate from the county tax assessor for the county where the home was located prior to the move, or an original, signed statement from a title company, lender, or escrow agent, executed by a person purporting to be its duly authorized officer or representative, that money sufficient to pay the taxes was being held by them and would be applied to the payment of those taxes;}

{(G) In instances where title to a manufactured home is conveyed in a transaction other than a transaction requiring a license under the Standards Act, such as testamentary and non-testamentary transfers, private sales not requiring a license, voluntary or court-ordered partitions, etc, originals or certified copies of appropriate documentation to support any such transfer, as required by the Department, and}

{(3) Any change in a Statement of Ownership and Location shall result in a new Statement of Ownership and Location being issued, and the new Statement of Ownership and Location shall specify the effective date which shall be either the date of the submission of the completed application or such other date as the Director may determine is appropriately supported by the information provided.}

{(e) Replacing a Document of Title.}

{(1) Upon receipt of a written request, applicable fee(s), and any necessary additional information, including a notarized statement of election of real or personal property status, the Department will replace a document of title with a Statement of Ownership and Location.}

{(2) If a manufactured home title showed that it was personal property, that will be presumed to be its status until and unless a revised Statement of Ownership and Location is applied for and issued. Likewise, if a manufactured home has had a certificate of attachment

issued and had title cancelled to real property, that shall be presumed to be its status until and unless a revised Statement of Ownership and Location is applied for and issued.}

(c) [(d)] Corrections to Statements of Ownership and Location.

(1) If a correction is required as a result of a department error, it will be corrected at no charge.

{(2) If an error was made for another reason, it will be corrected upon receipt of all documentation needed to support the correction.}

(2) [(3)] If a correction is requested because of an error made by a party other than the department, the correction will not be made until the department receives the following:

(A) A complete corrected application for Statement of Ownership and Location,

(B) Any necessary supporting documentation, and

(C) The required fee [ of \$25], which can be reduced or waived by the director for good cause.

(d) Upon issuance of a Statement of Ownership and Location, the department will mail one certified copy to the owner and one certified copy to the lienholder. If additional certified copies are desired, a written request must be submitted and accompanied by the additional fee.

(e) Exchanging a Document of Title for a Statement of Ownership and Location.

(1) Upon receipt of the original title and completed application for Statement of Ownership and Location, including the physical location of the home, the department will issue a Statement of Ownership and Location.

(2) If a manufactured home title showed that it was personal property, that will be presumed to be its status until and unless a revised Statement of Ownership and Location is applied for and issued. Likewise, if a manufactured home has had a certificate of attachment issued and had title cancelled to real property, that shall be presumed to be its status until and unless a revised Statement of Ownership and Location is applied for and issued.

(f) [(e)] Updating of Statements of Ownership and Location on Manufactured Homes Transferred as Real Property.

(1) When a manufactured home has become real property because the owner elected real property status and their Statement of Ownership and Location was recorded in the appropriate county records, the home may be sold or transferred as real property by the customary means used for real property transactions. As long as the home remains real property at the same location, ownership of the home is confirmed in the same manner as any other real property, rather than by verifying department records. Any buyer or transferee is not required to apply for a new Statement of Ownership and Location until and unless:

(A) the manufactured home is moved to a new location;

(B) the current owner of the manufactured home wishes to convert it to personal property status; or

(C) the manufactured home no longer meets the requirements to be classified as real property (such as the home being on property subject to a long term lease which is not assignable to the buyer or transferee).

(2) To convert a manufactured home from real property to personal property, the owner of the home must submit a completed Application for Statement of Ownership and Location to the department with supporting documentation as follows:

(A) If the applicant is not the owner of record with the department, satisfactory proof of ownership under a complete chain of title. Acceptable evidence would include, but not be limited to, authenticated copies of all intervening transfer documents, a court order confirming ownership, or [a commitment for] title insurance policy in such owner's name issued by a title insurance company licensed to do business in Texas.

(B) Satisfactory evidence that any liens on the manufactured home have been discharged or that all lienholders have consented to the change.

(3) Upon receipt of the certified copy of the new Statement of Ownership and Location that reflects the real [personal] property election of the home, the certified copy shall be filed [owner shall file that certified copy] in the county real property records, at which time the real [personal] property election will take effect.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 4, 2005.

TRD-200501385

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: May 15, 2005

For further information, please call: (512) 475-2206



## PART 6. OFFICE OF RURAL COMMUNITY AFFAIRS

### CHAPTER 255. TEXAS COMMUNITY DEVELOPMENT PROGRAM

#### SUBCHAPTER A. ALLOCATION OF PROGRAM FUNDS

##### 10 TAC §§255.1, 255.9, 255.16

The Office of Rural Community Affairs (Office) proposes amendments to §255.1, §255.9, and §255.16 concerning the allocation of Community Development Block Grant (CDBG) non-entitlement area funds under the Texas Community Development Program (TCDP).

The amendment to §255.1 is being proposed to define the area benefit standards that apply to street paving activities. The amendments to §255.9 will change the colonia construction fund funding cycle from an annual competition to a biennial competition and include new language for the past performance scoring criteria. The amendments to §255.16 include new language for the past performance scoring criteria.

Charles S. (Charlie) Stone, Executive Director of the Office, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Charles S. (Charlie) Stone, Executive Director of the Office, also has determined that for the period that the sections are in effect, the public benefit as a result of enforcing the section will be the equitable allocation of CDBG non-entitlement area funds to eligible units of general local government in Texas. There will be an effect on small businesses or micro-businesses as two new programs are being proposed to assist small businesses and micro-businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Jerry Hill, General Counsel, Office of Rural Community Affairs, P.O. Box 12877, Austin, Texas 78711, telephone : (512) 936-6701. Comments will be accepted for 30 days following the date of publication of this proposal in the *Texas Register*.

The amendments are proposed under the §487.052 of the Government Code, which provides the executive committee with the authority to adopt rules concerning the implementation of the Office's responsibilities.

No other code, article, or statute is affected by the proposed amendments.

##### §255.1. General Provisions.

(a) - (u) (No change.)

(v) Street paving activities. Area benefit can be used to qualify street paving activities. However, for street paving activities with multiple and non-contiguous target areas, each target area must separately meet the principally benefit low and moderate income national program objective. At least 51% of the residents located in each non-contiguous target area must be low and moderate income persons. A target area that does not meet this requirement cannot be included in an application for TCDP funds. The only exception to this requirement is street paving eligible under the disaster relief fund.

##### §255.9. Colonia Fund.

(a) - (b) (No change.)

(c) Types of applications. Eligible applicants may submit one application for the colonia construction fund and the colonia planning fund. Eligible applicants may submit one application for the colonia EDAP fund, unless the TCDP has an excess amount of colonia EDAP funds available in which case an eligible applicant could submit more than one application for the colonia EDAP fund. Eligible planning activities cannot be included in an application for the colonia construction fund. Two separate fund categories are available under the colonia planning fund. The colonia area planning fund is available for eligible planning activities that are targeted to selected colonia areas. The colonia comprehensive planning fund is available for countywide comprehensive planning activities that include an assessment and profiles of a county's colonia areas. Separate competitions are held for the colonia area planning fund and colonia comprehensive planning fund allocations. A county that has previously received a colonia comprehensive planning fund grant award from the Office may not submit another application for colonia comprehensive planning fund assistance. For a county to be eligible to submit an application for the colonia area planning fund, the county must have previously completed a colonia comprehensive plan that prioritizes problems and colonias for future action. The colonia or colonias included in the colonia area planning fund application must be colonias that were included in the colonia comprehensive plan.

(d) Funding cycle. The colonia construction fund is allocated to eligible county applicants on a biennial basis for the 2005 and 2006 program years pursuant to a competition held for the 2005 program

year applicants. The ~~[colonia construction fund and the]~~ colonia planning fund ~~is [are]~~ allocated on an annual basis to eligible county applicants through competitions conducted during the program year. Applications for funding must be received by the Office by the dates and times specified in the most recent application guide for each separate colonia fund category. The colonia self-help centers fund is allocated on an annual basis to counties included in Subchapter Z, Chapter 2306, §2306.582, Government Code, and/or counties designated as economically distressed areas under Chapter 17, Water Code. The colonia EDAP fund is allocated on an annual basis and the funds are distributed on an as-needed basis.

(e) Selection procedures.

(1) On or before the application deadline, each eligible county may submit one application for the colonia construction fund, for colonia comprehensive planning, and for colonia area planning. Eligible applicants for the colonia EDAP fund may submit one application after construction begins on the water or sewer system financed by the Texas Water Development Board's Economically Distressed Areas Program.

(2) Upon receipt of an application, the Office staff performs an initial review to determine whether the application is complete and whether all proposed activities are eligible for funding. The results of this initial review are provided to the applicant. If not subject to disqualification, the applicant may correct any deficiencies identified within ten calendar days of the date of the staff's notification.

(3) Each regional review committee may, at its option, review and comment on a colonia fund proposal from a jurisdiction within its state planning region. These comments will become part of the application file, provided such comments are received by the Office prior to scoring of the applications.

(4) The Office then scores the colonia construction fund and colonia planning fund applications to determine rankings. Scores on the selection factors are derived from standardized data from the Census Bureau, other federal or state sources, and from information provided by the applicant. For colonia EDAP fund applications, the Office evaluates information in each application and other factors before the completion of a final technical review of each application.

(5) Following a final technical review, the Office staff presents the funding recommendations for the 2005 and 2006 colonia construction fund and the 2005 colonia planning fund to the executive director of the Office. [Following a final technical review, the Office staff makes funding recommendations to the executive director of the Office.]

(6) The executive director of the Office reviews the 2005 final recommendations and except for awards exceeding \$300,000 announces the contract awards. Awards exceeding \$300,000 are submitted to the Executive Committee for approval.

(7) Upon announcement of the 2005 contract awards, the Office staff works with recipients to execute the contract agreements. While the award must be based on the information provided in the application, the Office may negotiate any element of the contract with the recipient as long as the contract amount is not increased and the level of benefits described in the application is not decreased. The level of benefits may be negotiated only when the project is partially funded.

(8) When the 2006 program year TCDP allocation becomes available, the executive director of the Office reviews the 2006 program year colonia construction fund final recommendations for project awards and except for awards exceeding \$300,000 announces the contract awards. Awards exceeding \$300,000 are submitted to the Executive Committee for approval.

(9) Upon announcement of the 2006 program year colonia construction fund contract awards, the Office staff works with recipients to execute the contract agreements. While the award must be based on the information provided in the application, the Office may negotiate any element of the contract with the recipient as long as the contract amount is not increased and the level of benefits described in the application is not decreased. The level of benefits may be negotiated only when the project is partially funded with the remainder of the target allocation within a region.

(f) Selection criteria (colonia construction fund). The following is an outline of the selection criteria used by the Office for scoring colonia construction fund applications. ~~[For the 2004 program year, four hundred twenty points are available based on the criteria included in paragraphs (1) through (6) of this subsection.]~~ For the 2005 program year, four hundred thirty points are available ~~[based on the criteria included in paragraphs (1) through (7) of this subsection].~~ ~~[For the 2005 program year, the past performance scoring described in paragraph (5)(G) and paragraph (6)(G) of this subsection will be replaced by the criteria described in paragraph (7) of this subsection.]~~

(1) Community distress (total--40 points). All community distress factor scores are based on the unincorporated population of the applicant. An applicant that has 125% or more of the average of all applicants in the competition of the rate on any community distress factor, except per capita income, receives the maximum number of points available for that factor. An applicant with less than 125% of the average of all applicants in the competition on a factor will receive a proportionate share of the maximum points available for that factor. An applicant that has 75% or less of the average of all applicants in the competition on the per capita income factor will receive the maximum number of points available for that factor. An applicant with greater than 75% of the average of all applicants in the competition on the per capita income factor will receive a proportionate share of the maximum points available for that factor.

(A) Percentage of persons living in poverty--15

(B) Per capita income--15

(C) Percentage of housing units without complete plumbing--10

(2) Benefit to low and moderate income persons (total--30 points). A formula is used to determine the percentage of TCDP funds benefiting low to moderate income persons. The percentage of low to moderate income persons benefiting from each construction, acquisition, and engineering activity is multiplied by the TCDP funds requested for each corresponding construction, acquisition, and engineering activity. Those calculations determine the amount of TCDP benefiting low to moderate income person for each of those activities. Then, the funds benefiting low to moderate income persons for each of those activities are added together and divided by the TCDP funds requested minus the TCDP funds requested for administration to determine the percentage of TCDP funds benefiting low to moderate income persons. Points are then awarded in accordance with the following scale:

(A) 100% to 90% of funds benefiting low to moderate income persons--30

(B) 89.99% to 80% of funds benefiting low to moderate income persons--25

(C) 79.99% to 70% of funds benefiting low to moderate income persons--20

(D) 69.99% to 60% of funds benefiting low to moderate income persons--15

(E) Below 60% of funds benefitting low to moderate income persons--5

(3) Project priorities (total--195 points) When necessary, a weighted average is used to assign scores to applications which include activities in the different project priority scoring levels. Using as a base figure the TCDP funds requested minus the TCDP funds requested for engineering and administration, a percentage of the total TCDP construction dollars for each activity is calculated. The percentage of the total TCDP construction dollars for each activity is then multiplied by the appropriate project priorities point level. The sum of the calculations determines the composite project priorities score. The different project priority scoring levels are:

(A) activities (service lines, service connections, and/or plumbing improvements) providing access to water and/or sewer systems funded through the Texas Water Development Board Economically Distressed Area program--195

(B) first time public water service activities (including yard service lines)--145

(C) first time public sewer service activities (including yard service lines)--145

(D) installation of approved residential on-site wastewater disposal systems --145

(E) housing activities--140

(F) first time water and/or sewer service through a privately-owned for profit utility--135

(G) expansion or improvement of existing water and/or sewer service--110

(H) street paving and drainage activities--75

(I) all other eligible activities--20

(4) Matching funds (total--20 points). An applicant's matching share may consist of one or more of the following contributions: cash; in-kind services or equipment use; materials or supplies; or land. An applicant's match is considered only if the contributions are used in the same target areas for activities directly related to the activities proposed in its application; if the applicant demonstrates that its matching share has been specifically designated for use in the activities proposed in its application; and if the applicant has used an acceptable and reasonable method of valuation. The population category under which county applications are scored is dependent upon the project type and the beneficiary population served. If the project is for activities in the unincorporated area of the county with a target area of beneficiaries, the population category is based on the unincorporated residents for the entire county. For county applications addressing water and sewer improvements in unincorporated areas, the population category is based on the actual number of beneficiaries to be served by the project activities. The population category under which multi-jurisdiction applications are scored is based on the combined populations of the applicants according to the 2000 Census. Applications that include a housing rehabilitation and/or affordable new permanent housing activity for low- and moderate-income persons as a part of a multi-activity application do not have to provide any matching funds for the housing activity. This exception is for housing activities only. The TCDP does not consider sewer or water service lines and connections as housing activities. The TCDP also does not consider on-site wastewater disposal systems as housing activities. Demolition/clearance and code enforcement, when done in the same target area in conjunction with a housing rehabilitation activity, is counted as part of the housing activity. When demolition/clearance and code enforcement are proposed activities, but are not part of a

housing rehabilitation activity, then the demolition/clearance and code enforcement are not considered as housing activities. Any additional activities, other than related housing activities, are scored based on the percentage of match provided for the additional activities.

(A) Applicants with populations equal to or less than 1,500 according to the 2000 census:

(i) match equal to or greater than 5.0% of grant request--20;

(ii) match at least 2.0% but less than 5.0% of grant request--10;

(iii) match less than 2.0% of grant request--0.

(B) Applicants with populations equal to or less than 3,000 but over 1,500 according to the 2000 census:

(i) match equal to or greater than 10% of grant request--20;

(ii) match at least 2.5% but less than 10% of grant request--10;

(iii) match less than 2.5% of grant request--0.

(C) Applicants with populations equal to or less than 5,000 but over 3,000 according to the 2000 census:

(i) match equal to or greater than 15% of grant request--20;

(ii) match at least 3.5% but less than 15% of grant request--10;

(iii) match less than 3.5% of grant request--0.

(D) Applicants with populations over 5,000 according to the 2000 census:

(i) match equal to or greater than 20% of grant request--20;

(ii) match at least 5.0% but less than 20% of grant request--10;

(iii) match less than 5.0% of grant request--0.

(5) Project design (total--135 points). Each application is scored based on how the proposed project resolves the identified need and the severity of need within the applying jurisdiction. A more detailed description on the assignment of points under the project design scoring is included in the application guide for this fund and in paragraph (6) of this subsection. Each application is scored by a committee composed of TCDP staff using the following information submitted in the application:

(A) the severity of need within the colonia area(s) and how the proposed project resolves the identified need (additional consideration is given to water activities addressing impacts from drought conditions);

(B) the TCDP cost per low to moderate income beneficiary;

(C) the applicant's past efforts, especially the applicant's most recent efforts, to address water, sewer, and housing needs in colonia areas through applications submitted under the TCDP community development fund or through community development block grant entitlement funds;

(D) the projected water and/or sewer rates after completion of the project based on 3,000 gallons, 5,000 gallons, and 10,000 gallons of usage;

(E) the ability of the applicant to utilize the grant funds in a timely manner;

(F) the availability of grant funds to the applicant for project financing from other sources;

~~[(G) the applicant's past performance on prior TCDP contracts;]~~

~~(G)~~ [(H)] whether the applicant, or the service provider, has waived the payment of water or sewer service assessments, capital recovery fees, and other access fees for the proposed low and moderate income project beneficiaries;

(H) [(H)] whether the applicant's proposed use of TCDP funds is to provide water or sewer connections/yardlines and/or plumbing improvements that provide access to water/sewer systems financed through the Texas Water Development Board Economically Distressed Areas Program;

~~[(I) whether the applicant provides any local matching funds for project activities;]~~

(I) [(K)] whether the applicant has already met its basic water and wastewater needs if the application is for activities other than water or wastewater; and

(J) ~~[(L)]~~ whether the project has provided for future funding necessary to sustain the project.

(6) Project design scoring guidelines. Project design scores are assigned by Office staff using guidelines that first consider the severity of the need for each application activity and how the project resolves the need described in the application. The severity of need and resolution of the need determine the maximum project design score that can be assigned to an application. After the maximum project design score has been established, points are then deducted from this maximum score through the evaluation of the other project design evaluation factors until the maximum score and the point deductions from that maximum score determine the final assigned project design score. When necessary, a weighted average is used to set the maximum project design score to applications that include activities in the different severity of the need/project resolution maximum scoring levels. Using as a base figure the TCDP funds requested minus the TCDP funds requested for engineering and administration, a percentage of the total TCDP construction dollars for each activity is calculated. The percentage of the total TCDP construction dollars for each activity is then multiplied by the appropriate maximum project design point level. The sum of the calculations determines the maximum project design score that the applicant can be assigned before points are deducted based on the evaluation of the other project design factors.

(A) Maximum project design score that can be assigned based on the severity of the need and resolution of the problem.

(i) Activities providing first-time sewer service to the area--maximum score 135 points.

(ii) Activities providing first-time water service to the area--maximum score 135 points.

(iii) Installation of approved residential on-site wastewater disposal systems--maximum score 135 points.

(iv) Housing rehabilitation and eligible new housing construction--maximum score 130 points.

(v) Water activities addressing and resolving water supply shortage from drought conditions--maximum score 130 points.

(vi) Water or sewer activities expanding or improving existing water or sewer system--maximum score 120 points.

(vii) Street paving activities providing first time surface pavement to the area--maximum score 100 points.

(viii) Installation of designed drainage structures providing first time designed drainage system to the area--maximum score 100 points.

(ix) Reconstruction of streets with existing surface pavement--maximum score 90 points.

(x) Installation of improvements or drainage structures to a designed drainage system--maximum score 90 points.

(xi) All other eligible activities--maximum score 80 points.

(B) TCDP cost per low to moderate income beneficiary. The total amount of TCDP funds requested by the applicant is divided by the total number of low to moderate income persons benefitting from the application activities to determine the TCDP cost per beneficiary.

(i) Cost per low to moderate income beneficiary is equal to or less than \$2,000. Deduct zero points from the set maximum project design score.

(ii) Cost per low to moderate income beneficiary is greater than \$2,000 but equal to or less than \$4,000. Deduct 1 point from the set maximum project design score.

(iii) Cost per low to moderate income beneficiary is greater than \$4,000 but equal to or less than \$6,000. Deduct 2 points from the set maximum project design score.

(iv) Cost per low to moderate income beneficiary is greater than \$6,000 but equal to or less than \$8,000. Deduct 3 points from the set maximum project design score.

(v) Cost per low to moderate income beneficiary is greater than \$8,000 but equal to or less than \$10,000. Deduct 4 points from the set maximum project design score.

(vi) Cost per low to moderate income beneficiary is greater than \$10,000. Deduct 5 points from the set maximum project design score.

(C) The applicant's past efforts, especially the applicant's most recent efforts, to address water, sewer, and housing needs in colonia areas through applications submitted under the TCDP community development fund or through community development block grant entitlement funds.

(i) The nonentitlement county submitted an application under the TCDP community development fund 2003/2004 biennial competition that was not addressing water, sewer, and housing needs in colonia areas. Deduct 3 points from the set maximum project design score.

(ii) The nonentitlement county submitted an application under the TCDP community development fund 2001/2002 biennial competition that was not addressing water, sewer, and housing needs in colonia areas. Deduct 3 points from the set maximum project design score.

(iii) The entitlement county did not use 2003 CDBG entitlement funds to address water, sewer, and housing needs in colonia areas. Deduct 3 points from the set maximum project design score.

(iv) The entitlement county did not use 2002 CDBG entitlement funds to address water, sewer, and housing needs in colonia areas. Deduct 3 points from the set maximum project design score.

(D) The projected water and/or sewer rates after completion of the project based on 3,000 gallons, 5,000 gallons, and 10,000 gallons of usage.

(i) The projected water and/or sewer rates may be too high for the application beneficiaries. Deduct 1 point from the set maximum project design score.

(ii) The projected water and/or sewer rates are too low to discourage water conservation by the application beneficiaries. Deduct 1 point from the set maximum project design score.

(E) The ability of the applicant to utilize the grant funds in a timely manner.

(i) The application includes the acquisition of real property, easements or rights-of-way. Deduct 1 point from the set maximum project design score.

(ii) The application includes matching funds that have not been secured by the applicant. Deduct 1 point from the set maximum project design score.

(iii) The proposed application target area is not located in an area where a service provider already has the certificate of convenience and necessity (CCN) needed to provide service to the application beneficiaries. Deduct 1 point from the set maximum project design score.

(F) The availability of grant funds to the applicant for project financing from other sources. Grant funds for any activity included in the application are available from another source. Deduct 1 point from the set maximum project design score.

[(G)] The applicant's past performance on prior TCDP contracts. The applicant's score will primarily be based on an assessment of the applicant's performance on the applicant's two (2) most recent TCDP contracts that have reached the end of the original contract period stipulated in the contract. TCDP staff may also assess the applicant's performance on existing TCDP contracts that have not reached the end of the original contract period. An applicant that has never received a TCDP grant award does not have any points deducted from the project design final score.]

[(i)] The applicant did not complete the previous TCDP contract activities within the original contract period. Deduct 1 point from the set maximum project design score for each occurrence (maximum of 2 points deducted from the set maximum project design score).]

[(ii)] The applicant did not submit the required close-out documents for the previous TCDP contracts within the period prescribed for such submission. Deduct 1 point from the set maximum project design score for each occurrence (maximum of 2 points deducted from the set maximum project design score).]

[(iii)] The applicant did not provide a timely response to monitoring findings on previous TCDP contracts. Deduct 1 point from the set maximum project design score (maximum of 1 point deducted from the set maximum project design score).]

[(iv)] The applicant did not provide a timely response to audit findings on previous TCDP contracts. Deduct 1 point from the set maximum project design score (maximum of 1 point deducted from the set maximum project design score).]

(G) [(H)] The applicant, or the service provider, has not waived the payment of water or sewer service assessments, capital recovery fees, and other access fees for the proposed low and moderate income project beneficiaries.

(i) Assessments and fees budgeted in the application are equal to or less than \$100 per low and moderate income household. Deduct 2 points from the set maximum project design score.

(ii) Assessments and fees budgeted in the application are greater than \$100 but equal to or less than \$200 per low and moderate income household. Deduct 4 points from the set maximum project design score.

(iii) Assessments and fees budgeted in the application are greater than \$200 but equal to or less than \$300 per low and moderate income household. Deduct 6 points from the set maximum project design score.

(iv) Assessments and fees budgeted in the application are greater than \$300 but equal to or less than \$500 per low and moderate income household. Deduct 8 points from the set maximum project design score.

(v) Assessments and fees budgeted in the application are greater than \$500 per low and moderate income household. Deduct 10 points from the set maximum project design score.

(H) [(H)] Applicant's proposed use of TCDP funds does not provide water or sewer connections/yardlines and/or plumbing improvements that provide access to water/sewer systems financed through the Texas Water Development Board Economically Distressed Areas Program. Deduct 2 points from the set maximum project design score.

(I) [(H)] The application is for activities other than water or wastewater and the applicant has not already met its basic water and wastewater needs. Deduct 3 points from the set maximum project design score.

(J) [(K)] The applicant has not documented that future funding necessary to sustain the project is available. Deduct 3 points from the set maximum project design score.

(7) Past performance. An applicant receives from zero to ten (10) points based on the applicant's past performance on previously awarded TCDP contracts. The applicant's score will primarily be based on an assessment of the applicant's performance on the applicant's two (2) most recent TCDP contracts that have reached the end of the original contract period stipulated in the contract. TCDP staff may also assess the applicant's performance on existing TCDP contracts that have not reached the end of the original contract period. An applicant that has never received a TCDP grant award will automatically receive these points. TCDP staff will assess the applicant's performance on TCDP contracts up to the application deadline date. The applicant's performance on TCDP contracts after the application deadline date will not be evaluated in this assessment. The evaluation of an applicant's past performance will include, but is not necessarily limited to the following:

(A) The applicant's completion of the previous contract activities within the original contract period. Deduct 2 points from the maximum past performance score for each occurrence where the applicant did not complete contract activities within the original contract period (maximum of 4 points deducted from the maximum past performance score).

(B) The applicant's submission of the required close-out documents within the period prescribed for such submission. Deduct 1 point from the maximum past performance score for each occurrence where the applicant did not submit the required close-out documents within the period prescribed for such submission (maximum of 2 points deducted from the maximum past performance score).

(C) The applicant's timely response to monitoring findings on previous TCDP contracts especially any instances when the monitoring findings included disallowed costs. Deduct 1 point from the maximum past performance score for any occurrence where the applicant did not provide a timely response to monitoring findings (maximum of 1 point deducted from the maximum past performance score).

(D) The applicant's timely response to audit findings on previous TCDP contracts. Deduct 1 point from the maximum past performance score for any occurrence where the applicant did not provide a timely response to audit findings (maximum of 1 point deducted from the maximum past performance score).

(E) The applicant's submission of all contract reporting requirements such as quarterly progress reports, certificates of expenditures, and project completion reports. Deduct 1 point from the maximum past performance score for each occurrence where the applicant did not submit contract reporting documents (maximum of 2 points deducted from the maximum past performance score).

(g) - (j) (No change.)

*§255.16. Non-Border Colonia Fund.*

(a) - (c) (No change.)

(d) Selection criteria (non-border colonia fund). The following is an outline of the selection criteria used by the Office for scoring colonia construction fund applications. Four hundred thirty points are available.

(1) - (6) (No change.)

(7) Past performance. An applicant receives from zero to ten (10) points based on the applicant's past performance on previously awarded TCDP contracts. The applicant's score will primarily be based on an assessment of the applicant's performance on the applicant's two (2) most recent TCDP contracts that have reached the end of the original contract period stipulated in the contract. TCDP staff may also assess the applicant's performance on existing TCDP contracts that have not reached the end of the original contract period. An applicant that has never received a TCDP grant award will automatically receive these points. TCDP staff will assess the applicant's performance on TCDP contracts up to the application deadline date. The applicant's performance on TCDP contracts after the application deadline date will not be evaluated in this assessment. The evaluation of an applicant's past performance will include, but is not necessarily limited to the following:

(A) The applicant's completion of the previous contract activities within the original contract period. Deduct 2 points from the maximum past performance score for each occurrence where the applicant did not complete contract activities within the original contract period (maximum of 4 points deducted from the maximum past performance score).

(B) The applicant's submission of the required close-out documents within the period prescribed for such submission. Deduct 1 point from the maximum past performance score for each occurrence where the applicant did not submit the required close-out documents within the period prescribed for such submission (maximum of 2 points deducted from the maximum past performance score).

(C) The applicant's timely response to monitoring findings on previous TCDP contracts especially any instances when the monitoring findings included disallowed costs. Deduct 1 point from the maximum past performance score for any occurrence where the applicant did not provide a timely response to monitoring findings (maximum of 1 point deducted from the maximum past performance score).

(D) The applicant's timely response to audit findings on previous TCDP contracts. Deduct 1 point from the maximum past performance score for any occurrence where the applicant did not provide a timely response to audit findings (maximum of 1 point deducted from the maximum past performance score).

(E) The applicant's submission of all contract reporting requirements such as quarterly progress reports, certificates of expenditures, and project completion reports. Deduct 1 point from the maximum past performance score for each occurrence where the applicant did not submit contract reporting documents (maximum of 2 points deducted from the maximum past performance score).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 4, 2005.

TRD-200501389

Charles S. (Charlie) Stone

Executive Director

Office of Rural Community Affairs

Earliest possible date of adoption: May 15, 2005

For further information, please call: (512) 936-6710

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**TITLE 37. PUBLIC SAFETY AND CORRECTIONS**

**PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE**

**CHAPTER 159. SPECIAL PROGRAMS**

**37 TAC §159.3**

The Texas Board of Criminal Justice proposes amendments to §159.3 Continuity of Care System for Offenders with Mental Impairments/Memorandum of Understanding. The purpose of the amendments is to clarify the Memorandum of Understanding between the Texas Department of Criminal Justice (TDCJ), the Department of State Health Services (DSHS), local Mental Health/Mental Retardation Authorities, and the Community Supervision and Corrections Departments (CSCDs) concerning a continuity of care system for offenders with mental illness or mental retardation.

Brad Livingston, Executive Director and Chief Financial Officer for TDCJ, has determined that for the first five years the rule will be in effect, enforcing or administering the rule does not have foreseeable implications related to costs or revenues for state or local government. Mr. Livingston has also determined that there will be no economic impact on persons required to comply with the rule. There will be no effect on small and micro-businesses. The anticipated public benefit as a result of enforcing the rule will be to enhance public safety.

Comments should be directed to Carl Reynolds, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Carl.Reynolds@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal.

The revisions are proposed under Texas Health and Safety Code, §614.013.



Cross Reference to Statutes: Texas Health and Safety Code, §614.013.

*§159.3. Continuity of Care System for Offenders with Mental Impairments/Memorandum of Understanding.*

(a) The Texas Department of Criminal Justice (TDCJ) adopts a memorandum of understanding (MOU) between the Texas Department of Criminal Justice, the ~~[Texas Health and Human Services Commission]~~ Department of State Health Services (DSHS), ~~[Community Mental Health/Mental Retardation Authorities/Centers,]~~ and Community Supervision and Corrections Departments concerning a continuity of care system for offenders with mental illness or mental retardation, as required by Texas Health and Safety Code, §614.013.

(b) Copies of the MOU are filed in offices of the Texas Correctional Office on Offenders with Mental Impairments, 8610 Shoal Creek Boulevard, Austin, Texas 78757, and may be reviewed during regular business hours.

Figure: 37 TAC §159.3(b)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 1, 2005.

TRD-200501382

Carl Reynolds

General Counsel

Texas Department of Criminal Justice

Earliest possible date of adoption: May 15, 2005

For further information, please call: (512) 463-0422



## **TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

### **PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES**

#### **CHAPTER 2. MENTAL RETARDATION AUTHORITY RESPONSIBILITIES**

##### **SUBCHAPTER L. SERVICE COORDINATION FOR INDIVIDUALS WITH MENTAL RETARDATION**

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), to amend §§2.553 - 2.556, 2.558, and 2.562, concerning service coordination for individuals with mental retardation; and proposes to repeal §§2.563 - 2.565, concerning Subchapter L superseding another subchapter, legal references and documents, and a distribution list, in its Mental Retardation Authority Responsibilities chapter.

The purpose of the amendments is, in part, to update agency names, correct mailing and website addresses, and correct referenced citations that were rendered incorrect upon transfer of the rules from Title 25, Part 2 to Title 40, Part 1 of the Texas Administrative Code. This transfer resulted from the consolidation of several state agencies, including part of the Texas Department of Mental Health and Mental Retardation (TDMHMR), to create DADS. The amendment to the definition of "MRA (mental retardation authority)" in §2.553 reflects the transfer of a power

of the governing body of TDMHMR to HHSC in accordance with §1.20(d) of House Bill 2292, 78th Legislature, Regular Session, 2003. The amendment to §2.554 corrects the name of the preadmission screening and resident review (PASARR) assessment. The proposal also replaces the provision in §2.556(c) to review an individual's plan of services and supports on a quarterly basis with the provision to revise the individual's plan when the individual's needs change or when the individual, legally authorized representative or actively involved person, service provider, or other person provides relevant information indicating revision of the plan is appropriate. The amendment to §2.556 also requires the plan to be revised using a person-directed planning process that is consistent with DADS' *Person Directed Planning and Family Directed Planning Guidelines for Individuals with Mental Retardation*. The repeal of §2.563 is proposed because this section refers to 25 TAC Chapter 412, Subchapter J, a subchapter that has been repealed. The repeal of §2.564 and §2.565 are proposed to make this subchapter more consistent with the majority of DADS rules, which do not include sections about references and distribution.

Gordon Taylor, DADS Chief Financial Officer, has determined that, for each of the first five years the proposed amendments and repeal are in effect, enforcing or administering the amendments and repeal does not have foreseeable implications relating to costs or revenues of state or local governments.

Jacquelyn McDonald, DADS Assistant Commissioner for Aging and Disability Access and Intake, has determined that, for each year of the first five years the amendments and repeal are in effect the public benefit expected as a result of enforcing the amendments and repeal is the promulgation of rules that clearly describe the provision of service coordination to individuals in DADS' mental retardation priority population who live in the community; and there is no probable economic cost to persons who are required to comply with the amendments and repeal.

DADS has determined that there is no adverse economic effect on small businesses or micro-businesses as a result of enforcing or administering the amendments and repeal, because the proposal does not affect small businesses or micro-businesses; the amendments and repeal will not affect a local economy; and the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043, Government Code.

Questions about the content of this proposal may be directed to Marcia Shultz at (512) 438-3532 in DADS' Office of Mental Retardation Authorities. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-006, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

#### **40 TAC §§2.553 - 2.556, 2.558, 2.562**

The amendments are proposed under the Texas Government Code §531.0055, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Aging and Disability Services; Texas Human Resources Code §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by the

department; and Texas Government Code §531.021, which provides HHSC with the authority to administer federal medical assistance funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The amendments affect the Texas Government Code, §531.0055 and §531.021, and the Texas Human Resources Code, §161.021.

*§2.553. Definitions.*

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

(1) - (2) (No change.)

(3) Department--The [Texas] Department of Aging and Disability Services (DADS) [Mental Health and Mental Retardation or its successor].

(4) - (10) (No change.)

(11) Institution for mental diseases (IMD)--As defined in 25 TAC §419.373 [of this title (relating to Definitions)], a hospital of more than 16 beds that is primarily engaged in providing psychiatric diagnosis, treatment, and care of individuals with mental diseases, including medical care, nursing care, and related services.

(12) - (15) (No change.)

(16) MRA (mental retardation authority)--An entity to which the Texas Health and Human Services Commission's authority and responsibility described in THSC, §531.002(11) has been delegated. [As defined in THSC, §531.002, an entity to which the Texas Mental Health and Mental Retardation Board delegates its authority and responsibility within a specified region for planning, policy development, coordination, and resource development and allocation, and for supervising and ensuring the provision of mental retardation services to persons in one or more local service areas.]

(17) Mental retardation priority population or MR priority population--Those individuals who:

(A) - (D) (No change.)

(E) are children eligible for early childhood intervention (ECI) services provided in accordance with [40 TAC] Chapter 108 of this title (relating to Early Childhood Intervention Services).

(18) - (26) (No change.)

(27) State MH facility (state mental health facility)--A state hospital or state center with an inpatient psychiatric component operated by the Department of State Health Services [department].

(28) - (31) (No change.)

*§2.554. Eligibility.*

(a) - (b) (No change.)

(c) Service coordination funded by Medicaid targeted case management:

(1) may be provided only to an individual who is a Medicaid recipient and:

(A) (No change.)

(B) who resides in a nursing facility licensed in accordance with THSC, Chapter 242, and who has been determined through a preadmission screening and [annual] resident review (PASARR) assessment to require specialized services; and

(2) (No change.)

*§2.555. Assessing an Individual's Need for Service Coordination.*

(a) (No change.)

(b) If the designated MRA determines an individual needs service coordination, the MRA must develop a plan of services and supports as described in §2.556(a) [~~§412.556(a)~~] of this title (relating to MRA's Responsibilities).

(c) A copy of the Service Coordination Assessment--Mental Retardation Services form may be obtained by contacting Access and Intake, Office of Mental Retardation Authorities, [the Office of Long Term Services and Supports, Texas] Department of Aging and Disability Services (DADS) W-354, P.O. Box 149030, Austin, Texas 78714-9030, or by accessing the DADS website at www.dads.state.tx.us [Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711 or by accessing the department's website at www.mhmr.state.tx.us].

*§2.556. MRA's Responsibilities.*

(a) Developing a plan of services and supports.

(1) (No change.)

(2) The plan of services and supports must include a component that addresses the individual's service coordination needs, which:

(A) is based on the results from the assessment performed in accordance with §2.555(a) [~~§412.555(a)~~] of this title (relating to Assessing an Individual's Need for Service Coordination);

(B) - (C) (No change.)

(b) (No change.)

(c) Revising the plan of services and supports.

(1) The MRA must ensure that the staff person providing service coordination to the individual revises the individual's plan of services and supports if:

(A) the individual's needs change; or

(B) the individual, LAR or actively involved person, service provider, or other person provides relevant information indicating revision of the plan is appropriate.

(2) The MRA must ensure that the staff person revises the plan using a person-directed planning process that is consistent with the department's *Person Directed Planning and Family Directed Planning Guidelines for Individuals with Mental Retardation*.

[(c) Reviewing the plan of services and supports. The MRA must ensure that the plan of services and supports of each individual receiving service coordination is reviewed quarterly to determine the appropriateness and effectiveness of the services and supports provided by all community providers and to ensure that the needs of the individual are being addressed.]

(d) (No change.)

(e) Individuals enrolled in the TxHmL Program. In addition to the requirements in this subchapter, the MRA must ensure service coordination is provided to individuals enrolled in the TxHmL Program in accordance with the requirements contained in Chapter 9 [449], Subchapter N of this title (relating to Texas Home Living (TxHmL) Program).

*§2.558. Termination of Service Coordination.*

The MRA must terminate service coordination for an individual if:

(1) the individual no longer meets the eligibility criteria for service coordination as set forth in §2.554 [~~§412.554~~] of this title (relating to Eligibility); or

(2) (No change.)

§2.562. *Review Process.*

(a) (No change.)

(b) Non-Medicaid-eligible individuals. If an MRA decides to deny, involuntarily reduce, or terminate service coordination for a non-Medicaid-eligible individual, the MRA must notify the individual or LAR in writing of the decision and provide an explanation of the procedure for the individual or LAR to request a review by the MRA as required by §2.46 [§401.464] of this title (relating to Notification and Appeals Process).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 4, 2005.

TRD-200501390

Phoebe Knauer

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: May 15, 2005

For further information, please call: (512) 438-3734



**40 TAC §§2.563 - 2.565**

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under the Texas Government Code §531.0055, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Aging and Disability Services; Texas Human Resources Code §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department; and Texas Government Code §531.021, which provides HHSC with the authority to administer federal medical assistance funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The repeal affects the Texas Government Code, §531.0055 and §531.021, and the Texas Human Resources Code, §161.021.

§2.563. *Subchapter Supersedes Chapter 412, Subchapter J.*

§2.564. *References.*

§2.565. *Distribution.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 4, 2005.

TRD-200501391

Phoebe Knauer

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: May 15, 2005

For further information, please call: (512) 438-3734

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**CHAPTER 48. COMMUNITY CARE FOR  
AGED AND DISABLED  
SUBCHAPTER B. INTEREST LISTS**

**40 TAC §48.1301**

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), new §48.1301, concerning interest lists, in new Subchapter B in its Community Care for Aged and Disabled chapter.

The purpose of the new section is to assist an elderly person or a person with a disability to access a DADS community care service as soon as possible after the service becomes available. The proposed new section defines "a DADS community care service" for the purposes of the subchapter as meaning a service provided under the Community Based Alternatives (CBA) Program, the Community Living Assistance and Support Services (CLASS) Program, or the Medically Dependent Children Program (MDCP). The proposal establishes DADS' procedure for assisting an elderly person or a person with a disability, or another person acting on behalf of an elderly person or a person with a disability, who inquires about a DADS community care service. DADS is proposing this new section to comply with Human Resources Code, §22.040.

Gordon Taylor, DADS Chief Financial Officer, has determined that, for each of the first five years the proposed new section is in effect, enforcing or administering the new section does not have foreseeable implications relating to costs or revenues of state or local governments.

Jacquelyn McDonald, DADS Assistant Commissioner for Aging and Disability Access and Intake, has determined that, for each year of the first five years the new section is in effect the public benefit expected as a result of enforcing the new section is that elderly persons and persons with disabilities will be able to access community care services as soon as possible after the service becomes available; and there is no probable economic cost to persons who are required to comply with the new section.

DADS has determined that there is no adverse economic effect on small businesses or micro-businesses as a result of enforcing or administering the new section, because the proposal does not affect small businesses or micro-businesses; the new section will not affect a local economy; and this proposal will not result in a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, Chapter 2007.

Questions about the content of this proposal may be directed to Debbie Brookshire at (512) 438-4798 in DADS' Regional and Local Services section. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-016, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The new section is proposed under the Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Aging and Disability Services; the Human Resources Code, §161.021, which provides that the Aging and

Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department; the Human Resources Code, §22.040, which requires DADS to develop and implement a plan to assist elderly persons or persons with disabilities who request community care services to receive those services as quickly as possible when the services become available; and the Government Code, §531.021, which provides HHSC with the authority to administer federal medical assistance funds and to plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The new section affects the Government Code, §531.0055 and §531.021; and the Human Resources Code, §22.040 and §161.021.

§48.1301. Interest Lists.

(a) The purpose of this section is to assist an elderly person or a person with a disability to access a Department of Aging and Disability Services (DADS) community care service as soon as possible after the service becomes available. For purposes of this subchapter, a "DADS community care service" or "service" is a service provided under:

- (1) the Community Based Alternatives (CBA) Program;
- (2) the Community Living Assistance and Support Services (CLASS) Program; or
- (3) the Medically Dependent Children Program (MDCP).

(b) An elderly person or a person with a disability, or another person acting on behalf of an elderly person or a person with a disability, may contact a DADS office or a designated telephone number to inquire about a DADS community care service. DADS assists the person in deciding which service may be appropriate for the elderly person or person with a disability.

(1) If the elderly person or the person with a disability wants to apply for a service that is available at the time of the inquiry, DADS assists the person in making an application, if necessary. DADS processes the application in accordance with the rules governing that service.

(2) If the elderly person or the person with a disability wants to apply for a service that is not available at the time of the inquiry, DADS places the person's name on an interest list for the service. A person's name is placed on the interest list in chronological order by the date DADS received the person's name, address, and contact information.

(c) During each fiscal-year quarter, DADS forecasts whether a service will become available during the next quarter. If DADS forecasts that the service will be available, DADS also estimates the number of persons that DADS will be able to enroll into the service during the next quarter.

(d) DADS contacts a person who, based on the position of the person's name on the interest list, might be enrolled into the service during the next quarter.

(1) If the person wants to apply for the service, DADS begins the service eligibility determination process in accordance with the rules governing that service at least 30 days before the service is forecast to be available.

(2) If the person is no longer interested in applying for the service or is determined ineligible for the service, DADS removes the name of the person from the interest list.

(e) DADS continues to contact persons on the interest list until the number of persons estimated under subsection (c) of this section has been enrolled into the service.

(f) DADS does not provide a DADS community care service to a person until the service is actually available.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 4, 2005.

TRD-200501392

Phoebe Knauer

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: May 15, 2005

For further information, please call: (512) 438-3734



## CHAPTER 51. WAIVER PROGRAM FOR MEDICALLY DEPENDENT CHILDREN

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), the repeals of §§51.1 - 51.5, 51.7, 51.31, and 51.39, concerning program requirements for the Medically Dependent Children Program (MDCP); and proposes new Subchapter A, §§51.101 and 51.103, concerning purpose and definitions; Subchapter B, §§51.201, 51.203, 51.205, 51.207, 51.211, 51.213, 51.215, 51.217, 51.219, 51.221, 51.231, 51.233, 51.235, 51.237, 51.239, 51.241, 51.243, and 51.251, concerning eligibility, enrollment, services, and appeals; Subchapter C, §§51.301, 51.303, 51.305, 51.307, 51.309, 51.321, 51.323, 51.325, 51.327, 51.329, and 51.331, concerning the individual's responsibilities for procuring adaptive aids and minor home modifications; Subchapter D, §§51.401, 51.403, 51.405, 51.407, 51.411, 51.413, 51.415, 51.417, 51.419, 51.421, 51.431, 51.433, 51.441, 51.451, 51.461, 51.463, 51.465, 51.471, 51.473, 51.475, 51.477, and 51.479, concerning provider contracting and service delivery requirements; and Subchapter E, §§51.501, 51.503, 51.505, 51.507, 51.509, 51.511, 51.513, and 51.515, concerning provider billings and record-keeping requirements, in its Medically Dependent Children Program chapter.

The purpose of the repeals and new sections is to reorganize the rules in Chapter 51 and to rewrite them in plain English that will be easier for the public, including individuals and providers, to locate and understand. The new rules govern the eligibility, enrollment process, individual responsibilities, and provider requirements under MDCP. The new sections also (1) update agency references from the Texas Department of Human Services to DADS or to HHSC, as appropriate; (2) offer additional definitions; (3) incorporate existing provider policy into rule language; (4) provide more flexibility in the use of required forms; and (5) add transition assistance services and the consumer directed services option to the array of MDCP services.

Gordon Taylor, Chief Financial Officer, has determined that, for each of the first five years the proposed repeals and new sections are in effect, enforcing or administering the repeals and new sections does not have foreseeable implications relating to costs or revenues of state or local governments.

Barry Waller, Assistant Commissioner for Provider Services, has determined that, for each year of the first five years the repeals and new sections are in effect: (1) the public benefit expected as a result of enforcing the repeals and new sections is the promulgation of rules that will clearly describe the responsibilities of the individual and the provider in the MDCP program; and (2) there is no probable economic cost to persons who are required to comply with the repeals and new sections.

DADS has determined that: (1) there is no adverse economic effect on small businesses or micro-businesses as a result of enforcing or administering the repeals and new sections, because the new rules clarify and streamline the program processes without adding requirements that will have an adverse economic effect on the providers; (2) the repeals and new sections will not affect a local economy; and (3) the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Government Code, §2007.043.

Questions about the content of this proposal may be directed to Lori Roberts at (512) 438-5391 in DADS Community Services Policy Development and Support Unit. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-198, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

#### **40 TAC §§51.1 - 51.5, 51.7, 51.31, 51.39**

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeals are proposed under Government Code §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Aging and Disability Services; Human Resources Code §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department; and Government Code §531.021, which provides HHSC with the authority to administer federal medical assistance funds and to plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The repeals affect the Government Code, §531.0055 and §531.021, and the Human Resources Code §161.021.

§51.1. *Purpose.*

§51.2. *Definitions.*

§51.3. *Participant Eligibility Criteria.*

§51.4. *Location of Medically Dependent Children Program (MDCP) Waiver Service Delivery.*

§51.5. *Waiver Services.*

§51.7. *Cost Controls and Cost Savings.*

§51.31. *Deinstitutionalization Due to Closure of Facility.*

§51.39. *Changes in Medically Dependent Children Program Services.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 4, 2005.

TRD-200501393

Phoebe Knauer

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: May 15, 2005

For further information, please call: (512) 438-3734

## **CHAPTER 51. MEDICALLY DEPENDENT CHILDREN PROGRAM SUBCHAPTER A. INTRODUCTION**

### **40 TAC §§51.101, §51.103**

The new sections are proposed under Government Code §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Aging and Disability Services; Human Resources Code §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department; and Government Code §531.021, which provides HHSC with the authority to administer federal medical assistance funds and to plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The new sections affect the Government Code, §531.0055 and §531.021, and the Human Resources Code §161.021.

#### §51.101. Purpose.

This chapter establishes:

(1) the eligibility requirements for an individual to participate in MDCP; and

(2) the requirements for a provider of MDCP services.

#### §51.103. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

(1) §1915(c) waiver program--A home or community-based service authorized by §1915(c) of the Social Security Act and approved by the Centers for Medicare and Medicaid Services.

(2) Activities of daily living--Activities that are essential to daily self care, including bathing, dressing, grooming, routine hair and skin care, meal preparation, feeding, exercising, toileting, transfer and ambulation, positioning, range of motion, and assistance with self-administered medications.

(3) Adaptive aid--A device that is needed to treat, rehabilitate, prevent, or compensate for a condition that results in a disability or a loss of function and helps an individual perform the activities of daily living or control the environment in which he lives.

(4) Adjunct support services--Direct care services needed because of an individual's disability that:

(A) help an individual participate in:

- (i) child care;
- (ii) post-secondary education; or
- (iii) independent living; or

(B) support an individual's move to an independent living situation.

(5) Appeal--A request for a hearing to challenge a service suspension, service reduction, service denial, or case closure.

(6) Attendant--An employee of a provider or of an individual who has selected the consumer directed services option who provides direct care to the individual.

(7) Basic child care--Watchful attention and supervision of an individual while the individual's primary caregiver is at work, in job training, or at school.

(8) BNE--Board of Nurse Examiners for the State of Texas.

(9) Case closure--A DADS action that terminates an individual from MDCP services.

(10) Case manager--A DADS employee who is responsible for case management activities for an individual, including eligibility determination, enrollment, assessment and reassessment of the individual's need, service plan development, and intercession on the individual's behalf.

(11) Consumer directed services--A means of service delivery in which an individual or the individual's parent or guardian is the employer of the attendant.

(12) Contract--A written agreement between DADS and a provider to provide MDCP services to an individual in exchange for payment.

(13) Cost ceiling--The maximum dollar amount available to an individual for MDCP services per IPC year, which is based on 63% of the nursing facility rate associated with the individual's TILE score.

(14) DADS--Department of Aging and Disability Services.

(15) DADS RN--A DADS employee who is an RN and has two years of experience in pediatric nursing.

(16) Day--Any reference to a day means a calendar day, unless otherwise specified in the text. A calendar day includes weekends and holidays.

(17) Delegated task--A task that a practitioner or RN delegates in accordance with state law.

(18) DFPS--Department of Family and Protective Services.

(19) Facility-based respite--Respite services provided to an individual in a licensed hospital or nursing facility.

(20) Family member--A person who is related by blood, by affinity, or by law to an individual.

(21) Foster home--Means a foster home as defined in the Human Resources Code, §42.002.

(22) Guardian--A person appointed as a guardian of the estate or of the person by a court.

(23) HHSC--Texas Health and Human Services Commission.

(24) Host family--A provider with whom an individual lives when the individual's parents are unable to care for him.

(25) Imminent danger--An immediate, real threat to a person's safety.

(26) Individual--A person who has been determined eligible to receive MDCP services.

(27) Interest list--A list of people who have contacted DADS and expressed an interest in MDCP services but have not applied for nor been determined eligible for MDCP services.

(28) IPC--Individual plan of care. A plan that documents the following:

(A) services provided to an individual through both MDCP and third-party resources, and the sources or providers of those services;

(B) medical information about the individual obtained by a DADS RN;

(C) a social assessment of the individual and the individual's family obtained by the case manager;

(D) the projected cost of the MDCP services;

(E) the service initiation date; and

(F) the respite or adjunct support services provider's service schedule.

(29) IPC year--A period not to exceed 365 days that is recorded on the IPC with a beginning and end date.

(30) LVN--Licensed vocational nurse. A person licensed by the BNE or who holds a license from another state recognized by the BNE to practice vocational nursing in Texas.

(31) MDCP--Medically Dependent Children Program. A §1915(c) waiver program that provides community-based services to help the primary caregiver care for an individual in the community.

(32) Medical necessity--The medical criteria a person must meet for admission to a Texas nursing facility.

(33) Minor home modification--A physical change to an individual's residence that is needed to prevent institutionalization or to support the most integrated setting for an individual to remain in the community.

(34) Parent--An individual's natural or adoptive parent or the spouse of the natural or adoptive parent.

(35) Practitioner--A physician currently licensed in Texas, Louisiana, Arkansas, Oklahoma, or New Mexico; a physician assistant currently licensed in Texas; or an RN approved by the BNE to practice as an advanced practice nurse.

(36) Primary caregiver--A person who:

(A) is legally responsible for an individual's routine daily care, provision of food, shelter, clothing, health care, education, nurturing, and supervision; and

(B) provides daily, uncompensated care for the individual.

(37) Provider--An entity that has a contract with DADS to provide MDCP services.

(38) Reckless behavior--Acting with conscious indifference to the consequences.

(39) Residence--The place where an individual lives.

(40) Respite services--Direct care services needed because of an individual's disability that provide a primary caregiver temporary

relief from caregiving activities when the primary caregiver would usually perform such activities.

(41) RN--Registered nurse. A person licensed by the BNE or who holds a license from another state recognized by the BNE to practice professional nursing in Texas.

(42) Service authorization form--Document that shows DADS' approval for a provider to deliver MDCP services.

(43) Service initiation date--The first day an individual begins receiving MDCP services.

(44) Service reduction--A temporary or permanent decrease in the number of service hours delivered to an individual.

(45) Service schedule--A schedule for delivering respite or adjunct support services to an individual that is agreed upon and signed by the individual or the individual's parent or guardian. A fixed service schedule specifies certain days, times of day, or time periods for delivery of the services. A variable service schedule specifies the number of authorized hours of services to be delivered per day, per week, or per month, but does not specify certain days, times of day, or time periods for delivery of the services.

(46) Service suspension--A temporary stoppage of MDCP services without loss of program or Medicaid eligibility.

(47) Texas Accessibility Standards--Texas Department of Licensing and Regulation building standards adopted to meet the provisions of Texas Government Code, Chapter 469, and to meet or exceed the construction and alterations requirements of Title III of the Americans with Disabilities Act (42 U.S.C. §§12181 - 12189).

(48) Third-party resources--Goods and services available to an individual from a source other than MDCP, such as Medicaid home health, Texas Health Steps Comprehensive Care Program, and private insurance.

(49) TILE--Texas Index for Level of Effort. The system used to identify the intensity of the care needs of a person in a Texas nursing facility and in MDCP.

(50) Transition assistance services--One-time service provided to a Medicaid-eligible resident of a nursing facility located in Texas to assist the resident in moving from the nursing facility into the community to receive MDCP services.

(51) Working day--Any day except Saturday, Sunday, a state holiday, or a federal holiday.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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## SUBCHAPTER B. ELIGIBILITY, ENROLLMENT, AND SERVICES

### DIVISION 1. ELIGIBILITY

## 40 TAC §§51.201, 51.203, 51.205, 51.207

The new sections are proposed under Government Code §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Aging and Disability Services; Human Resources Code §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department; and Government Code §531.021, which provides HHSC with the authority to administer federal medical assistance funds and to plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The new sections affect the Government Code, §531.0055 and §531.021, and the Human Resources Code §161.021.

### §51.201. Interest List.

Anyone may contact DADS to inquire about MDCP services. To place a person on the interest list, DADS must have the person's name, address, and contact information. DADS then assigns the person a place on the interest list chronologically by date of receipt of this information.

### §51.203. Eligibility Requirements.

To be eligible to participate in MDCP, a person must:

- (1) live in Texas;
- (2) be:
  - (A) a citizen of the United States (U.S.);
  - (B) an alien who entered the U.S. before August 22, 1996, who has lived in the U.S. continuously since entry, and who meets the definition of a qualified alien at 8 U.S.C. §1641(b) or (c); or
  - (C) an alien who entered the U.S. on or after August 22, 1996, who has lived in the U.S. continuously since entry, and who meets the definition of a qualified alien at 8 U.S.C. §1612(b) and §1613;
- (3) be under 21 years of age;
- (4) meet the financial Medicaid eligibility criteria described in 1 TAC Chapter 358 (relating to Medicaid Eligibility), based on the income and resources of the individual;
- (5) for initial enrollment only, meet at least one of the disability criteria described in §51.205(b) of this chapter (relating to Disability Criteria);
- (6) meet medical necessity as described in §51.207 of this chapter (relating to Medical Necessity);
- (7) have an IPC that a practitioner has signed; and
- (8) if the person is under 18 years of age, reside:
  - (A) with a family member; or
  - (B) with a foster family that includes no more than four children unrelated to the individual.

### §51.205. Disability Criteria.

(a) To be eligible for MDCP, a person must meet the criteria in subsection (b) of this section only upon initial enrollment into MDCP.

- (b) A person meets the disability criteria if the person:
- (1) receives disability benefits from:

- (A) Supplemental Security Income;
- (B) federal old-age, survivors, and disability insurance;

or

- (C) railroad retirement; or

- (2) has a disability determination by HHSC.

§51.207. Medical Necessity.

(a) An entity contracted by HHSC determines medical necessity.

(b) A determination that an individual meets medical necessity is valid for one year. An individual must receive a determination of medical necessity annually to remain eligible for MDCP.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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## DIVISION 2. ENROLLMENT

### 40 TAC §§51.211, 51.213, 51.215, 51.217, 51.219, 51.221

The new sections are proposed under Government Code §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Aging and Disability Services; Human Resources Code §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department; and Government Code §531.021, which provides HHSC with the authority to administer federal medical assistance funds and to plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The new sections affect the Government Code, §531.0055 and §531.021, and the Human Resources Code §161.021.

§51.211. Enrollment.

(a) Except as provided in subsections (b) and (c) of this section, enrollment in MDCP is limited to the number of individuals and the amount of state funding approved by the Texas Legislature.

(b) Enrollment in MDCP under the criteria described in §51.213 of this chapter (relating to Enrollment of Former Nursing Facility Residents) is limited to the number of individuals DADS determines can be enrolled in MDCP under that criteria.

(c) Enrollment in MDCP under the criteria provided in subsection (d)(3) of this section is unlimited.

- (d) DADS mails enrollment materials:

(1) to the person whose name is first on the interest list described in §51.201 of this chapter (relating to Interest List) when a place in the program becomes available;

(2) to a person who meets the criteria in §51.213 of this chapter when DADS has a vacancy for a person who formerly lived in a nursing facility; or

- (3) to a person who:

(A) is under age 21;

(B) resides in a nursing facility located in Texas;

(C) is enrolled in Medicaid; and

(D) requests MDCP services while residing in a nursing facility located in Texas.

(e) Within 30 days of the date of the letter from DADS that accompanies the enrollment materials, a person or the person's parent or guardian must complete and return the required enrollment materials to DADS.

(f) DADS suspends enrollment into MDCP when DADS determines that the number of individuals and projected costs exceed funded limits in the current state fiscal year.

(g) An individual may be enrolled in only one §1915(c) waiver program at a time.

(h) An individual may receive services through the Medicaid-funded Primary Home Care and Comprehensive Care programs while receiving MDCP services.

§51.213. Enrollment of Former Nursing Facility Residents.

- (a) A person may be enrolled in MDCP if:

(1) the person was admitted to a nursing facility located in Texas after September 1, 1995, for long-term care purposes;

(2) the person no longer lives in a nursing facility located in Texas; and

(3) DADS has a vacancy for a person who formerly lived in a nursing facility.

(b) A person who meets the criteria in subsection (a) of this section must also meet the criteria in §51.203 of this chapter (relating to Eligibility Requirements) to be determined eligible for MDCP services.

§51.215. Home Visit.

After DADS mails the enrollment materials as described in §51.211 of this chapter (relating to Enrollment), the case manager and a DADS RN conduct a home visit to:

- (1) complete the medical assessment;

- (2) complete the social assessment;

(3) develop the IPC as described in §51.217 of this chapter (relating to Individual Plan of Care); and

(4) assist the family in completing the application for Medicaid, if necessary.

§51.217. Individual Plan of Care.

- (a) The IPC is developed by:

(1) the individual;

(2) the individual's parent or guardian;

(3) the case manager;

(4) a DADS RN; and

(5) any other person who participates in the individual's care, such as the provider, a representative of the school system, or other third-party resource.



(b) The service initiation date on the IPC is negotiated by:

- (1) the individual;
- (2) the individual's parent or guardian;
- (3) the Medicaid eligibility worker (if applicable);
- (4) the provider; and
- (5) the case manager.

(c) The individual or the individual's parent or guardian, the individual's practitioner, and the case manager must sign the completed IPC form.

§51.219. Maintaining Enrollment.

(a) To maintain enrollment in MDCP, the individual or the individual's parent or guardian must:

- (1) participate in the development and implementation of the IPC;
- (2) ensure that there is not a 60-day break in service delivery, unless the 60-day break in service is due to extenuating circumstances and the case manager has approved the 60-day break in service;
- (3) use MDCP services as described in the IPC;
- (4) select the provider;
- (5) provide training, monitor, and supervise the provider;

and

(6) keep in the residence the most recent seven days of service delivery documentation as referenced in §51.503 of this chapter (relating to In-Home Record) and make it available to DADS upon request.

(b) An individual may lose eligibility for MDCP if the individual or the individual's parent or guardian fails to comply with the requirements in subsection (a) of this section.

§51.221. Other Responsibilities.

(a) The individual's parent or guardian must be responsible for basic child care.

(b) The individual or the individual's parent or guardian must sign and return the completed IPC to the case manager within 10 days of receipt.

(c) The individual or the individual's parent or guardian must report the following events to the case manager within two working days of the event:

- (1) a change in the individual's income, including gain or loss of financial assistance (including Supplemental Security Income);
- (2) settlement of a lawsuit;
- (3) receipt of services from a third-party resource;
- (4) a change in the individual's living arrangement;
- (5) a change (improvement or worsening) in the individual's medical condition that is expected to be long term;
- (6) a problem with an MDCP service or a provider; or
- (7) the stoppage of services by a provider.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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## DIVISION 3. SERVICES

### 40 TAC §§51.231, 51.233, 51.235, 51.237, 51.239, 51.241, 51.243

The new sections are proposed under Government Code §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Aging and Disability Services; Human Resources Code §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department; and Government Code §531.021, which provides HHSC with the authority to administer federal medical assistance funds and to plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The new sections affect the Government Code, §531.0055 and §531.021, and the Human Resources Code §161.021.

§51.231. Service Limitations.

(a) General. The individual or the individual's parent or guardian may not ask the provider to provide MDCP services to any other household member while serving the individual in the individual's residence.

(b) Respite and adjunct support services.

(1) Respite services may not be provided in a setting in which identical services are already being provided.

(2) Facility-based respite is limited to 29 days per IPC year. If an individual or the individual's parent or guardian requests an extension of the 29-day limit, the case manager must inform DADS' Access and Intake Division of the number of days requested beyond the 29-day limit and the reason for the request. DADS' Access and Intake Division approves or denies the request.

(3) Adjunct support services may be used only when the primary caregiver is working, attending job training, or attending school.

(c) Adaptive aids.

- (1) The cost ceiling for adaptive aids is \$4,000 per IPC year.
- (2) Adaptive aids costing less than \$100 are not reimbursable.

(d) Minor home modifications. The cost ceilings for minor home modifications are:

- (1) \$7,500 in an individual's lifetime; and
  - (2) \$300 for repairs and maintenance per IPC year.
- (e) Transition assistance services.

(1) An individual may access transition assistance services only once in the individual's lifetime.

(2) The cost ceiling for transition assistance services is \$2,500.

§51.233. Choosing a Provider.

(a) The individual or the individual's parent or guardian must choose the provider. The case manager gives a list of providers to the individual or the individual's parent or guardian.

(b) If the individual or the individual's parent or guardian chooses an entity that is not on the case manager's list of providers for a particular service, that service may not begin until the entity contracts with DADS to provide that service.

§51.235. Consumer Directed Services Option.

An individual may choose to participate in a payment option that allows the individual or the individual's parent or guardian to direct the recruiting, hiring, management, and firing of the individual's attendant as described in Chapter 41 of this title (relating to Vendor Fiscal Intermediary Payments). The consumer directed services option is available only for respite or adjunct support services provided by an attendant.

§51.237. Service Schedule Changes.

(a) An individual or the individual's parent or guardian may make minor changes in the service schedule for respite and adjunct support services without prior approval if the changes:

(1) do not exceed the individual's cost ceiling; and

(2) do not increase the individual's total monthly hours, unless the individual approves the use of hours not used in a previous month and the use of hours not used in a previous month increases the total monthly hours by less than 50%.

(b) DADS must give prior approval for the use of hours not used in a previous month if the use of those hours increases the total monthly hours by 50% or more.

§51.239. Exceeding the Cost Ceiling.

(a) DADS may not disallow or jeopardize MDCP services for an individual if:

(1) those services are required for the individual to live in the most integrated setting appropriate to the individual's needs;

(2) the cost for the needed services for each six-month period of the IPC year, averaged and excluding the cost of minor home modifications and adaptive aids, does not exceed 133.3% of the cost ceiling; and

(3) DADS continues to comply with the cost-effectiveness requirements from the Centers for Medicare and Medicaid Services (CMS).

(b) If an individual has a change in needs that would cause the cost for needed services, under the IPC, to exceed 100% of the cost ceiling, the case manager may consider the individual's request if there is a change in:

(1) the individual's medical condition, functional needs, or environment;

(2) the caregiver support or third-party resources that have been providing service to the individual; or

(3) the need for a service or support to adequately support the individual living in the most integrated setting appropriate to the individual's needs.

(c) If an individual's needs cannot be met within the cost ceiling described in subsection (a)(2) of this section, then the individual is no longer eligible for MDCP services, unless the individual meets the criteria in subsection (d) of this section.

(d) If an individual is receiving MDCP services on September 1, 2003, under the authority of Rider 7 of the Appropriations Act, 77th Texas Legislature, DADS will continue services if they are necessary for the individual to live in the most integrated setting appropriate to the individual's needs and DADS continues to comply with CMS cost-effectiveness requirements.

(e) The DADS commissioner will consider a written request for an exemption to this section if an individual's needs cannot be met within the estimated cost ceiling and services cannot be provided through any other setting or program.

§51.241. Service Suspensions.

(a) DADS or a provider must suspend an individual's MDCP services if or when:

(1) the individual is admitted for purposes other than respite services to:

(A) a hospital (if an RN or an LVN provides the services);

(B) a nursing facility (if an RN or an LVN provides the services);

(C) a state mental retardation facility;

(D) a state mental health facility;

(E) a rehabilitation hospital; or

(F) an intermediate care facility for persons with mental retardation or related conditions; or

(2) the individual or someone in the individual's residence exhibits reckless behavior that may result in imminent danger to the health and safety of the individual, the provider, or another person in the residence.

(b) DADS or a provider may suspend an individual's MDCP services if the individual or someone in the individual's residence discriminates against a provider or a DADS employee.

(c) The provider resumes services after a suspension:

(1) on a date specified in writing by the case manager;

(2) upon the individual's return home from an institution listed in subsection (a)(1) of this section; or

(3) on the date the provider becomes aware of the individual's return home.

(d) DADS notifies the individual in writing of the process to appeal a service suspension as described in §51.251 of this chapter (relating to Appeals).

§51.243. Service Reductions, Service Denials, and Case Closures.

(a) Service reductions. DADS will reduce services to an individual when:

(1) third-party resources become available to the individual;

(2) the individual's annual cost ceiling decreases; or

(3) budgetary constraints require cost reductions.

(b) Service denials. DADS may deny services to an individual when:

(1) the individual no longer meets the eligibility requirements described in §51.203 of this chapter (relating to Eligibility Requirements);

(2) the individual does not use MDCP services for 60 or more consecutive days without prior approval from the case manager;

(3) the individual's primary caregiver does not participate in the development of the IPC; or

(4) budgetary constraints require cost reductions.

(c) Case closure. DADS closes an individual's case if:

(1) the individual no longer meets the eligibility requirements described in §51.203 of this chapter;

(2) the individual dies;

(3) the individual enters an institution for long-term care purposes;

(4) the individual starts receiving services through another §1915(c) waiver program;

(5) the individual does not use MDCP services for 60 or more consecutive days without prior approval from the case manager;

(6) the individual's primary caregiver does not participate in the development of the individual's IPC; or

(7) the individual requests that services end.

(d) Notifications.

(1) The effective date of the service reduction, service denial, or case closure is 30 days after the date on the individual's notification letter.

(2) DADS notifies the individual in writing of the process to appeal the service reduction, service denial, or case closure as described in §51.251 of this chapter (relating to Appeals).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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## DIVISION 4. APPEALS

### 40 TAC §51.251

The new section is proposed under Government Code §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Aging and Disability Services; Human Resources Code §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department; and Government Code §531.021, which provides HHSC with the authority to administer federal medical assistance funds and to plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The new section affects the Government Code, §531.0055 and §531.021, and the Human Resources Code §161.021.

### §51.251. Appeals.

(a) Appeals and hearings are conducted as described in 1 TAC Chapter 357 (relating to Medical Fair Hearings).

(b) An individual may appeal a DADS action. In this section, a DADS action means a service suspension as described in §51.241 of this chapter (relating to Service Suspensions), or a service reduction, service denial, or case closure as described in §51.243(a), (b), and (c)(1) - (6) of this chapter (relating to Service Reductions, Service Denials, and Case Closures).

(c) To appeal a DADS action, an individual must make a request for a hearing orally or in writing to the case manager within 90 days from the date on the notice of the DADS action.

(d) DADS may continue MDCP services until the hearing is conducted if an individual who is currently receiving services requests a hearing within 30 days from the date on the notice of the DADS action and requests that services continue during the appeal process. An individual must contact the case manager orally or in writing to make these requests. If the hearing officer upholds the DADS action, DADS may require the individual to pay DADS for the cost of services delivered after the effective date of the DADS action.

(e) If a suspension occurs because of the reckless behavior described in §51.241(a)(2) of this chapter, then services must not continue during the appeal process.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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## SUBCHAPTER C. RESPONSIBILITIES OF THE INDIVIDUAL IN SECURING ADAPTIVE AIDS AND MINOR HOME MODIFICATIONS

### DIVISION 1. ADAPTIVE AIDS

### 40 TAC §§51.301, 51.303, 51.305, 51.307, 51.309

The new sections are proposed under Government Code §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Aging and Disability Services; Human Resources Code §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department; and Government Code §531.021, which provides HHSC with the authority to administer federal medical assistance funds and to plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The new sections affect the Government Code, §531.0055 and §531.021, and the Human Resources Code §161.021.

§51.301. Procurement.

(a) Before procuring an adaptive aid costing \$100 or more, an individual must submit a request for the adaptive aid, including the written specifications and bids, to the case manager for approval.

(b) The case manager notifies the individual upon approval or disapproval of the request. If the request is approved, the case manager notifies the individual of the approved dollar amount.

(c) In this division, individual means the individual or the individual's parent or guardian, unless the context clearly indicates otherwise.

§51.303. Specifications for Adaptive Aids.

(a) An individual must obtain written specifications for each adaptive aid from:

- (1) a practitioner;
- (2) a physical therapist;
- (3) an occupational therapist;
- (4) a speech pathologist; or
- (5) an adaptive aid provider.

(b) The individual must ensure that the written specifications are recorded on a single document that includes:

- (1) the name and address of the individual receiving MDCP services;
- (2) a description of the adaptive aid being specified;
- (3) the written specifications;
- (4) the printed name and dated signature of the person preparing the written specifications; and
- (5) the individual's dated signature.

§51.305. Bids for Adaptive Aids.

(a) An individual must obtain a minimum of three written bids based on the written specifications described in §51.303 of this chapter (relating to Specifications for Adaptive Aids).

(b) The individual must make the same specifications available to each bidder.

(c) If the individual is unable to obtain three bids, the individual must contact the case manager and explain why the individual could not obtain three bids. The individual must be prepared to provide specific information about his efforts to secure three bids.

§51.307. Enhancements to Adaptive Aids.

If the individual wants to proceed with the purchase of an adaptive aid that exceeds the cost or scope of the approved request, the individual is responsible for all costs associated with the enhancement.

§51.309. Vehicle Modifications and Adaptive Equipment.

(a) For the purpose of this chapter, vehicle modifications and adaptive equipment are considered adaptive aids, and the individual must follow the procurement procedures for adaptive aids in this division in addition to the requirements of this section.

(b) When requesting a vehicle modification, the individual provides the following information to the case manager:

- (1) information on the vehicle to be modified, including:

- (A) the year and model of the vehicle;
- (B) proof of ownership;
- (C) current state inspection and tags;
- (D) applicable state insurance; and
- (E) mileage;

- (2) information on the needed modifications; and

(3) if the individual is not the owner of the vehicle, the individual must provide the vehicle owner's signed and dated written approval for the vehicle modification.

(c) When an individual requests a vehicle modification that costs \$1,000 or more and the vehicle has been driven more than 100,000 miles or is more than four years old, the individual must submit to the case manager:

(1) a written evaluation by an experienced mechanic who is not the provider of the requested vehicle modification to document the sound mechanical condition of all major components of the vehicle; and

(2) documentation of the experience of the mechanic who performed the evaluation.

(d) Bids for a vehicle modification must include:

- (1) an itemized list of parts and accessories, including their prices;
- (2) an itemized list of required labor and charges; and
- (3) information on warranty coverage.

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## **DIVISION 2. MINOR HOME MODIFICATIONS**

### **40 TAC §§51.321, 51.323, 51.325, 51.327, 51.329, 51.331**

The new sections are proposed under Government Code §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Aging and Disability Services; Human Resources Code §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department; and Government Code §531.021, which provides HHSC with the authority to administer federal medical assistance funds and to plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The new sections affect the Government Code, §531.0055 and §531.021, and the Human Resources Code §161.021.

§51.321. Minor Home Modifications.

(a) Before undertaking a minor home modification, an individual must submit a request for the minor home modification to the case manager. For a minor home modification costing \$1,000 or more, the request must include written specifications and bids as described in this division.

(b) The case manager notifies the individual upon approval or disapproval of the request. If the request is approved, the case manager notifies the individual of the approved dollar amount.

(c) In this division, individual means the individual or the individual's parent or guardian, unless the context clearly indicates otherwise.

§51.323. List of Minor Home Modifications.

(a) Minor home modifications covered under MDCP are limited to:

- (1) the purchase and installation of permanent and portable ramps;
- (2) widening of doorways;
- (3) modifications to bathroom facilities; and
- (4) modifications related to the approved installation or modification of ramps, doorways, or bathroom facilities.

(b) A minor home modification must not create a new structure or add square footage to the home.

§51.325. Specifications for Minor Home Modifications.

(a) For a minor home modification costing \$1,000 or more, an individual must obtain written specifications. The individual may obtain separate written specifications when different contractors will complete different parts of the modification.

(b) A person with home modification experience must prepare the written specifications. The individual must document the experience of the person preparing the specifications and submit the documentation to the case manager with the request for the minor home modification.

(c) The individual must record the specifications on a single document that includes:

- (1) the individual's name and address;
- (2) a description of the home modification being specified;
- (3) the written specifications, including any applicable local regulations, any construction requirements, and any applicable Texas Accessibility Standards;
- (4) the printed name and dated signature of the person who prepared the written specifications; and
- (5) the individual's dated signature.

§51.327. Owner Approval for Minor Home Modifications.

An individual must obtain written approval for a minor home modification from the property owner (if leasing or renting) before submitting the request to the case manager, unless the individual's lease or rental agreement for the property specifically allows for modifications. Owner approval must be recorded on a single document that includes:

- (1) the name and address of the person receiving MDCP services;

- (2) a description of the minor home modification;
- (3) the individual's approval of the modification;
- (4) the individual's dated signature;
- (5) the property owner's approval or disapproval of the modification as described in the written specifications; and
- (6) the property owner's printed name and dated signature.

§51.329. Bids for Minor Home Modifications.

(a) For a modification costing \$1,000 or more, an individual must obtain a minimum of three written bids based on the written specifications described in §51.325 of this chapter (relating to Specifications for Minor Home Modifications).

(b) The individual must make the same specifications available to each bidder. Multiple modifications may be included in one bid if the same contractor will be doing the multiple modifications as one job.

(c) If the individual is unable to obtain three bids, the individual must contact the case manager to provide documentation to support the lack of three bids and explain why the individual could not obtain three bids. The individual must be prepared to provide specific information about all efforts to secure three bids.

§51.331. Enhancements to Minor Home Modifications.

If an individual wants to proceed with a minor home modification that exceeds the cost or scope of the approved request, the individual is responsible for obtaining new written specifications and for all costs associated with the enhancement.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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## SUBCHAPTER D. PROVIDER REQUIREMENTS

### DIVISION 1. CONTRACTING REQUIREMENTS

#### 40 TAC §§51.401, 51.403, 51.405, 51.407

The new sections are proposed under Government Code §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Aging and Disability Services; Human Resources Code §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department; and Government Code §531.021, which provides HHSC with the authority to administer federal medical assistance funds and to plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The new sections affect the Government Code, §531.0055 and §531.021, and the Human Resources Code §161.021.

§51.401. Contracting Requirements.

(a) General contracting requirements. A provider must:

(1) meet all provisions described in:

(A) this chapter;

(B) Chapter 49 of this title (relating to Contracting for Community Care Services); and

(C) Chapter 69 of this title (relating to Contract Administration);

(2) be contracted with DADS to provide MDCP services;

(3) operate within the scope of its:

(A) licensure;

(B) accreditation;

(C) education; or

(D) experience; and

(4) meet all local, state, and federal regulations.

(b) Specific contracting requirements.

(1) A home and community support services agency must be licensed in the personal assistance services, licensed home health, or licensed and certified home health categories of licensure.

(2) An independently contracted LVN must be licensed by the BNE or hold a license from another state recognized by the BNE to practice vocational nursing in Texas. An independently contracted RN must be licensed by the BNE or hold a license from another state recognized by the BNE to practice professional nursing in the state of Texas.

(3) A host family must be licensed as a foster home by DFPS or verified by a child-placing agency that is licensed by DFPS.

(4) An adaptive aid provider must be:

(A) enrolled with DADS as a provider of durable medical equipment;

(B) an entity that sells its products directly; and

(C) approved by the Department of Assistive and Rehabilitative Services to install van lifts (if applicable).

(5) A minor home modification provider must be a general contractor registered with the Texas Residential Construction Commission.

(6) A provider contracted to provide consumer directed services must comply with the requirements in Chapter 41 of this title (relating to Vendor Fiscal Intermediary Payments).

(7) A transition assistance services provider must meet the requirements in Chapter 62 of this title (relating to Contracting to Provide Transition Assistance Services).

(8) A camp must be licensed and accredited by the American Camping Association.

(9) Other entities that contract to provide MDCP services must maintain any applicable license.

§51.403. Use of Third-Party Resources.

A provider must attempt to access services through any third-party resource available to the individual before using MDCP resources. The

provider must maintain documentation in the individual's file showing clearly that services were requested correctly and were denied by the third-party resource.

§51.405. Monitoring Medicaid Eligibility.

(a) Each month, the provider must verify the individual's Medicaid eligibility. The provider may verify the individual's Medicaid eligibility by:

(1) viewing the individual's Medicaid Identification form;

or

(2) using the current systems available through HHSC to verify eligibility.

(b) DADS does not reimburse the provider for services delivered to someone who was not eligible for Medicaid at the time services were delivered.

§51.407. Written Information.

The provider must send by mail, fax, or hand-delivery any written information that DADS requires of the provider. DADS does not accept e-mail delivery, unless the provider subsequently sends the original document to DADS by mail, fax, or hand-delivery.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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## **DIVISION 2. SERVICE DELIVERY REQUIREMENTS FOR ALL PROVIDERS**

### **40 TAC §§51.411, 51.413, 51.415, 51.417, 51.419**

The new sections are proposed under Government Code §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Aging and Disability Services; Human Resources Code §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department; and Government Code §531.021, which provides HHSC with the authority to administer federal medical assistance funds and to plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The new sections affect the Government Code, §531.0055 and §531.021, and the Human Resources Code §161.021.

§51.411. General Service Delivery Requirements.

(a) A provider must provide services as indicated on the service authorization form.

(b) A respite or adjunct support services provider must provide services as indicated on the service authorization form and according to the service schedule.

(c) A provider must have an alternative service delivery plan in case the provider is unable to deliver services as scheduled.

(d) The provider must ensure that an attendant, RN, or LVN provides MDCP services to only one individual during the time scheduled for the individual.

§51.413. Response to Service Authorization.

(a) A provider must receive the service authorization form from the case manager before delivering services.

(b) Within 14 days after receiving the service authorization form, the provider must send the case manager:

(1) a signed copy of the service authorization form; and

(2) a signed copy of the practitioner's orders. This paragraph applies only to a respite or adjunct support services provider that is:

(A) a home and community support services agency using:

(i) an RN;

(ii) an LVN; or

(iii) an attendant with delegated nursing tasks; or

(B) an independently contracted RN or LVN.

§51.415. Notification to the Individual.

(a) Within 14 days of receiving the service authorization form, a provider must give the following information to the individual:

(1) the provider's alternative service delivery plan in case the provider is unable to deliver services as scheduled;

(2) the individual's right to change providers;

(3) the procedure to file a complaint about the provider, in accordance with §49.17 of this title (relating to Complaint Procedures); and

(4) the procedure to report abuse and neglect.

(b) The provider must notify the individual in writing on or before the service initiation date if the provider is unable to provide services as indicated on the service authorization form or has any limitations in delivery of services.

(c) After the service initiation date, the provider must notify the individual orally or in writing at least five days before suspending services as referenced in §51.419 of this chapter (relating to Service Suspensions). If the provider's first notification is oral, the provider must send written notification to the individual within five working days of the first notification.

§51.417. Notification to the Case Manager.

(a) Required notification. A provider must notify the case manager if:

(1) the individual's primary caregiver refuses to comply with the IPC;

(2) the provider is unable to verify the individual's Medicaid eligibility as required in §51.405 of this chapter (relating to Monitoring Medicaid Eligibility);

(3) the provider is unable to begin services on the service initiation date. This notification must include:

(A) an explanation of why there is a delay in the service initiation date; and

(B) an expected date that services will begin; or

(4) the provider makes any changes in service delivery.

(b) Method and deadline for notification.

(1) The provider must notify the case manager orally or by fax about any circumstance described in subsection (a) of this section no later than one working day after awareness.

(2) If the provider's notification is oral, the provider must speak directly with the case manager. If the provider is unable to speak directly with the case manager, the provider may leave a telephone message. If the provider leaves a telephone message, the provider must document all attempts to meet the deadline and make a follow-up contact with the case manager within one working day.

(3) If the provider's notification is oral, the provider must send written notification to the case manager within five working days of the oral notification.

§51.419. Service Suspensions.

(a) Required service suspensions. A provider must suspend services to an individual if or when the individual:

(1) is admitted for purposes other than respite services to:

(A) a hospital (if the services are provided by an RN or an LVN);

(B) a nursing facility (if the services are provided by an RN or an LVN);

(C) a state mental retardation facility;

(D) a state mental health facility;

(E) a rehabilitation hospital; or

(F) an intermediate care facility for persons with mental retardation or related conditions; or

(2) someone in the individual's residence exhibits reckless behavior that may result in imminent danger to the health and safety of the individual, the provider, or another person. If this occurs the provider must make an immediate referral to:

(A) DFPS or other appropriate protective services agency;

(B) local law enforcement; and

(C) the case manager.

(b) Other service suspensions. A provider may suspend services to an individual:

(1) if the individual or someone in the individual's residence discriminates against a provider or a DADS employee; or

(2) if the individual refuses to follow the practitioner's orders as they pertain to MDCP services.

(c) Notification of service suspension. The provider must notify the case manager orally or by fax about a service suspension no later than one working day after services are suspended. If the provider's notification is oral, the provider must send written notification to the case manager within five working days of the first notification.

(d) Notification requirements. The notification must include:

(1) the date of service suspension;

(2) the reason for the suspension;

(3) the duration of the suspension, if known; and

(4) an explanation of the provider's attempts to resolve the problem that caused the suspension, including the reason why the problem was not resolved. This subparagraph applies only to circumstances described in subsections (a)(2) and (b) of this section.

(e) Resuming services after a suspension. The provider must resume services after a suspension:

- (1) on the date specified in writing by the case manager;
- (2) upon the individual's return home from an institution listed in subsection (a)(1) of this section; or
- (3) on the date the provider becomes aware of the individual's return home.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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### **DIVISION 3. SERVICE DELIVERY REQUIREMENTS FOR RESPITE AND ADJUNCT SUPPORT SERVICES**

#### **40 TAC §51.421**

The new section is proposed under Government Code §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Aging and Disability Services; Human Resources Code §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department; and Government Code §531.021, which provides HHSC with the authority to administer federal medical assistance funds and to plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The new section affects the Government Code, §531.0055 and §531.021, and the Human Resources Code §161.021.

#### §51.421. Requirements for Attendants.

(a) When an individual selects his attendant, the home and community support services agency (HCSSA) provider may hire that attendant if the attendant:

- (1) meets minimum qualifications of the HCSSA for the service required as specified in Chapter 97 of this title (relating to Licensing Standards for Home and Community Support Services Agencies);
- (2) is willing to be employed by the HCSSA; and
- (3) is determined by the HCSSA RN to be competent to deliver the service according to the IPC.

(b) A provider must not hire or employ an attendant if that attendant is:

- (1) the parent or guardian of the individual; or
  - (2) a person who lives in the individual's residence.
- (c) A provider who employs an attendant for an individual must:

- (1) provide the attendant with individual-specific information and training in the individual's residence on all tasks that the attendant will perform;
- (2) deliver the training according to the requirements described in §97.245 of this title (relating to Staffing Policies); and
- (3) document:
  - (A) when the training was conducted; and
  - (B) the tasks covered in the training.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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### **DIVISION 4. SERVICE DELIVERY REQUIREMENTS FOR HOST FAMILIES**

#### **40 TAC §51.431, §51.433**

The new sections are proposed under Government Code §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Aging and Disability Services; Human Resources Code §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department; and Government Code §531.021, which provides HHSC with the authority to administer federal medical assistance funds and to plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The new sections affect the Government Code, §531.0055 and §531.021, and the Human Resources Code §161.021.

#### §51.431. Host Family Requirements.

- (a) The host family must not provide services in its residence to more than four persons unrelated to the individual at one time.
- (b) The host family must ensure that:
  - (1) the individual participates in age-appropriate community activities; and
  - (2) the host family home environment is healthy and safe for the individual.



(c) The host family must provide services in a residence that the host family owns or leases. The residence must be a typical residence in the neighborhood and must meet the needs of the individual.

§51.433. Host Family Duties.

(a) The host family must provide services to the individual as authorized on the IPC, including:

- (1) direct personal assistance with activities of daily living;
- (2) assistance with meal planning and preparation;
- (3) assistance with housekeeping;
- (4) assistance with communication and mobility;
- (5) reinforcement of behavioral, educational, and therapeutic activities;
- (6) assistance with medication and the performance of tasks;
- (7) supervision for the individual's safety;
- (8) transportation related to routine family activities; and
- (9) assistance with participation in community activities.

(b) The host family must:

(1) allow the individual's family members and friends access to the individual without arbitrary restrictions, unless exceptional conditions are justified, documented in the IPC, and approved by the case manager;

(2) assist a school-age individual in receiving educational services provided by the local school district in a six-hour-per-day program five days a week, unless the individual's practitioner or the school system justifies a reduced schedule;

(3) ensure that a preschool-age individual receives an early childhood education with appropriate activities and services, including small group and individual play with peers without disabilities, unless justification for not participating in such activities is documented and approved by the case manager;

(4) provide the individual with age-appropriate activities that enhance self-esteem and maximize functional level; and

(5) ensure that the individual receives medical care prescribed by a practitioner, including:

- (A) doctors' appointments;
- (B) medications;
- (C) evaluations, therapies, and treatment; and
- (D) laboratory work and other medical tests.

(c) Each month, the host family must provide progress notes to the case manager, including a summary of:

- (1) socialization activities;
- (2) use of third-party resources;
- (3) other services included on the IPC; and
- (4) documentation of justification for a reduced school schedule as required in subsection (b)(2) of this section.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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## **DIVISION 5. SERVICE DELIVERY REQUIREMENTS FOR CONSUMER DIRECTED SERVICES**

### **40 TAC §51.441**

The new section is proposed under Government Code §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Aging and Disability Services; Human Resources Code §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department; and Government Code §531.021, which provides HHSC with the authority to administer federal medical assistance funds and to plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The new section affects the Government Code, §531.0055 and §531.021, and the Human Resources Code §161.021.

#### §51.441. Consumer Directed Services.

(a) This section applies only to a provider serving an individual who chooses service delivery through consumer directed services.

(b) The consumer directed services payment option may only be used for respite or adjunct support services provided by an attendant.

(c) An RN or LVN employed by a provider that is a home and community support services agency is not responsible for supervising any task listed in Government Code, §531.051(h) when an individual enrolled in consumer directed services or the individual's parent or guardian chooses to supervise any of those tasks.

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## **DIVISION 6. SERVICE DELIVERY REQUIREMENTS FOR TRANSITION ASSISTANCE SERVICES**

### **40 TAC §51.451**

The new section is proposed under Government Code §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Aging and Disability Services; Human Resources Code §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department; and Government Code §531.021, which provides HHSC with the authority to administer federal medical assistance funds and to plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The new section affects the Government Code, §531.0055 and §531.021, and the Human Resources Code §161.021.

§51.451. Transition Assistance Services.

(a) Provider requirement. A provider must complete transition assistance services at least two days before an individual's discharge from a nursing facility and in accordance with Chapter 62 of this title (relating to Contracting to Provide Transition Assistance Services). Transition assistance services can be delivered only once in a person's lifetime.

(b) Required notification. If a provider cannot complete transition assistance services at least two days before the individual's discharge from the nursing facility, the provider must notify the case manager before the discharge date by speaking directly with the case manager to:

- (1) give a description of the pending services;
- (2) state the reason for the delay;
- (3) give an anticipated date of service delivery or state why the provider cannot anticipate a delivery date; and
- (4) give a description of the provider's efforts to deliver the services.

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## **DIVISION 7. SERVICE DELIVERY REQUIREMENTS FOR ADAPTIVE AIDS**

### **40 TAC §§51.461, 51.463, 51.465**

The new sections are proposed under Government Code §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Aging and Disability Services; Human Resources Code §161.021, which provides that the Aging and

Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department; and Government Code §531.021, which provides HHSC with the authority to administer federal medical assistance funds and to plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The new sections affect the Government Code, §531.0055 and §531.021, and the Human Resources Code §161.021.

§51.461. Delivery of Adaptive Aids.

(a) The provider must deliver the adaptive aid that meets the written specifications.

(b) The provider must:

(1) deliver the adaptive aid within 30 working days of one of the following dates, whichever is later:

(A) the effective date of the IPC; or

(B) the date the provider receives and date stamps the service authorization form; or

(2) notify the individual and the case manager in writing of any delay in completing delivery of the adaptive aid, the reason for the delay, and the new proposed date of delivery.

(A) The individual and the case manager must receive the notification on or before the 30th working day described in paragraph (1) of this subsection.

(B) If DADS determines the documented reason for the delay is outside the provider's control, the provider is considered to be in compliance with this section.

§51.463. Follow-up After Delivery of Adaptive Aids.

(a) Within seven working days from the date the adaptive aid is delivered, the provider must contact the individual to:

(1) verify the delivery of the adaptive aid;

(2) determine and document the individual's satisfaction or dissatisfaction with the adaptive aid; and

(3) orient the individual on the use of the adaptive aid.

(b) The provider must make a home visit if the individual is dissatisfied with the adaptive aid or needs additional training or orientation on its use. If the provider can resolve the dissatisfaction, the provider must do so within seven working days of the home visit. If the provider cannot resolve the dissatisfaction, the provider must contact the case manager within seven working days of the home visit.

(c) Within 14 working days of the initial contact required in subsection (a) of this section, the provider must complete the home visit and document delivery of the adaptive aid as described in §51.505 of this chapter (relating to Purchase Completion Documentation).

§51.465. Reimbursement of Adaptive Aids.

To be reimbursed for an adaptive aid, the provider must:

(1) complete purchase documentation as described in §51.505 of this chapter (relating to Purchase Completion Documentation);

(2) submit a claim to the entity designated by HHSC to process claims payments when the adaptive aid is delivered;

(3) maintain complete documentation of services delivered; and

(4) ensure that the claim submitted is for expenses incurred before the death or ineligibility of the individual.

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## **DIVISION 8. SERVICE DELIVERY REQUIREMENTS FOR MINOR HOME MODIFICATIONS**

### **40 TAC §§51.471, 51.473, 51.475, 51.477, 51.479**

The new sections are proposed under Government Code §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Aging and Disability Services; Human Resources Code §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department; and Government Code §531.021, which provides HHSC with the authority to administer federal medical assistance funds and to plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The new sections affect the Government Code, §531.0055 and §531.021, and the Human Resources Code §161.021.

#### §51.471. General Requirements.

(a) The provider must obtain all applicable building permits before starting a minor home modification.

(b) The provider must complete the minor home modification according to:

(1) the written specifications;

(2) Texas Accessibility Standards; and

(3) any other agreement signed by all parties before the job began.

(c) The provider must not hire or reimburse a spouse, parent, or guardian of an individual for work related to the modification, including preparation of the written specifications and the inspection.

#### §51.473. Time Frames for Completion of Minor Home Modifications. The provider must:

(1) ensure completion of the minor home modification within 30 working days of one of the following dates, whichever is later:

(A) the effective date of the IPC; or

(B) the date the provider receives and date stamps the service authorization form; or

(2) notify the individual and the case manager in writing of any delay in completion of the modification, the reason for the delay, and the new proposed date of completion.

(A) The notification must be received on or before the 30th working day described in paragraph (1) of this section.

(B) If DADS determines the documented reason for the delay is outside the provider's control, the provider is considered to be in compliance with this section.

#### §51.475. Inspection and Follow-Up.

(a) The provider must ensure that someone who did not complete the minor home modification inspects the minor home modification.

(b) The inspection must be made on-site within seven working days of the completion date to determine whether the modification:

(1) was completed;

(2) is in compliance with Texas Accessibility Standards and any other applicable standards or codes; and

(3) is in compliance with the written specifications, if applicable.

(c) For requirements concerning reimbursement of the inspection fee, see §51.477 of this chapter (relating to Reimbursement of Minor Home Modifications).

(d) Within seven working days of the date a completed minor home modification is inspected, the provider must contact the individual to:

(1) verify the completion of the minor home modification;  
and

(2) determine and document the individual's satisfaction or dissatisfaction with the minor home modification.

(e) The provider must make a home visit if the individual is dissatisfied with the minor home modification. If the provider can resolve the dissatisfaction, the provider must do so within seven working days of the home visit. If the provider cannot resolve the dissatisfaction, the provider must contact the case manager within seven working days of the home visit.

(f) Within 14 working days of the initial contact required in subsection (d) of this section, the provider must complete the home visit and document the completion and inspection of the minor home modification as described in §51.505 of this chapter (relating to Purchase Completion Documentation).

#### §51.477. Reimbursement of Minor Home Modifications.

(a) Reimbursement for inspection. The fee for inspecting a minor home modification, not to exceed \$150, is reimbursable as part of the modification. The inspection fee must be approved as part of the bid.

(b) Reimbursement for completed minor home modifications. The provider must:

(1) complete and maintain documentation that the modification, including the inspection, is completed and approved, as described in §51.505 of this chapter (relating to Purchase Completion Documentation);

(2) submit a claim to the entity designated by HHSC to process claims payments when the minor home modification is completed and passes the inspection described in §51.475(a) and (b) of this chapter (relating to Inspection and Follow-Up); and

(3) maintain documentation that:

(A) the claim submitted is for expenses incurred before the death or ineligibility of the individual; and

(B) all subcontractors have been paid.

***§51.479. Accountability for Minor Home Modifications.***

The provider is responsible for all repairs or replacement of a minor home modification during the first year after completion, unless the individual or the individual's family members caused the need for repair or replacement. If the individual or the individual's family members caused the need for repair or replacement, then the individual or the individual's parent or guardian is responsible for the repair or replacement.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Phoebe Knauer

General Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-3734



## SUBCHAPTER E. CLAIMS PAYMENT AND DOCUMENTATION

### **40 TAC §§51.501, 51.503, 51.505, 51.507, 51.509, 51.511, 51.513, 51.515**

The new sections are proposed under Government Code §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Aging and Disability Services; Human Resources Code §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department; and Government Code §531.021, which provides HHSC with the authority to administer federal medical assistance funds and to plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The new sections affect the Government Code, §531.0055 and §531.021, and the Human Resources Code §161.021.

***§51.501. Service Delivery Record.***

A respite or adjunct support services provider must maintain a service delivery record that contains the following:

(1) the individual's name;

(2) the individual's Medicaid number;

(3) the IPC year;

(4) the provider's name and vendor number;

(5) the name of the person providing services and any applicable credentials;

(6) the authorized service and description from the IPC;

(7) the tasks assigned;

(8) the dates of service delivery; and

(9) the units of service delivered.

***§51.503. In-Home Record.***

(a) A respite or adjunct support services provider must maintain an in-home record in the individual's residence that contains:

(1) service delivery records from the last seven days of service;

(2) the individual's practitioner's name and telephone number;

(3) a signed copy of the Client's Rights and Responsibilities form;

(4) a written evacuation plan;

(5) emergency contact numbers;

(6) an alternative service delivery plan for provider coverage;

(7) contact numbers for reporting complaints, abuse, or neglect;

(8) practitioner's orders for any skilled care or tasks, medications, or delegated tasks, signed within the preceding 12 months, if applicable; and

(9) if applicable, signed and dated nursing notes that must include the following information:

(A) medication administration or treatment;

(B) nursing interventions completed according to practitioner's orders; and

(C) the nursing assessment completed at the beginning of each shift.

(b) If a provider delivers services that will be reimbursed by a third-party resource, the in-home record must specify the date and time those services were delivered.

***§51.505. Purchase Completion Documentation.***

(a) An adaptive aid or minor home modification provider must record the completion of purchase for a minor home modification or an adaptive aid on a single document that includes:

(1) the name of the individual and the individual's parent or guardian, if applicable;

(2) the individual's address;

(3) a description of the modification or adaptive aid;

(4) the date of completion or delivery;

(5) a statement of satisfaction or dissatisfaction with the minor home modification or adaptive aid; and

(6) the provider's name and vendor number.

(b) In addition to the requirements in subsection (a) of this section, the minor home modification provider must include the following on the purchase completion document:

(1) the name and qualifications of the inspector;

(2) whether the minor home modification was:

(A) completed according to Texas Accessibility Standards; and

(B) completed according to any required written specifications;

(3) the inspector's dated signature; and

(4) the individual's dated signature.

(c) In addition to the requirements in subsection (a) of this section, the adaptive aid provider must include the following on the purchase completion document:

(1) the name and title of the person completing the orientation on the adaptive aid; and

(2) the date of the orientation on the adaptive aid.

(d) If the provider must make a home visit to the individual due to the individual's dissatisfaction or to provide additional orientation, the provider must send a copy of the purchase completion documentation to the case manager within seven working days of the home visit.

(e) After all purchase completion documentation activities are complete, the provider's representative must sign and date the purchase completion document referenced in subsection (a) of this section and submit it to the case manager within seven working days of the dated signature.

#### §51.507. Reimbursement.

(a) General billing requirements. The provider must bill DADS for services provided as described in §49.41 of this title (related to Billings and Claims Payment).

(b) Unit rate. The provider must agree to accept and DADS will pay only the unit rate established by HHSC.

(c) Documentation. The provider must maintain the documentation described in this chapter to be eligible for reimbursement.

#### §51.509. Claims and Service Delivery Records.

(a) The provider must ensure that the claim for reimbursement corresponds to the provider's service authorization form and service delivery records and that the records contain:

(1) the IPC and attachments; and

(2) documentation of services delivered.

(b) In addition to the requirements in subsection (a) of this section, the minor home modification provider's records must contain:

(1) receipts from the subcontractor (if applicable) for the completed minor home modification, documenting the date of completion and the cost of the modification;

(2) any applicable building permits;

(3) written specifications, if required;

(4) written approval from the homeowner for the minor home modification made; and

(5) purchase completion documentation, as described in §51.505 of this chapter (relating to Purchase Completion Documentation).

(c) In addition to the requirements in subsection (a) of this section, an adaptive aid provider's records must contain:

(1) written approval from the vehicle owner for any vehicle modification made; and

(2) purchase completion documentation, as described in §51.505 of this chapter.

#### §51.511. Billable Time and Activities.

The provider may bill for and DADS will approve payment for:

(1) respite services;

(2) adjunct support services;

(3) minor home modifications, including:

(A) cost of labor;

(B) materials;

(C) sales tax;

(D) actual cost of written specification development up to \$200; and

(E) actual cost of the inspection up to \$150;

(4) adaptive aids, including:

(A) invoice cost of the item;

(B) actual cost, when the item is purchased through a supplier; and

(C) sales tax; and

(5) transition assistance services.

#### §51.513. Non-billable Time and Activities.

A provider must not bill for and DADS will not approve payment for:

(1) more than 16 hours of services provided by the same person within a 24-hour period;

(2) services provided to any family member other than the individual;

(3) time spent filing claims for services;

(4) travel to and from the individual's home;

(5) processing paperwork or completing records or reports;

(6) services not approved by authorized DADS staff;

(7) the cost of making a home visit that is not included in the bid (for example, to perform orientation or make adjustments to an adaptive aid);

(8) the delivery charge for an adaptive aid;

(9) office equipment, supplies, and other office expenses, including:

(A) fax machines;

(B) printers and copiers;

(C) scanners; and

(D) Internet and e-mail services;

(10) a repair covered under a warranty;

(11) a minor home modification that does not pass inspection;

(12) interest or other charges on past due expenses;

(13) property or income taxes; or

(14) insurance coverage or benefits payments, such as:

(A) life insurance;

(B) accidental insurance;

(C) death benefits;

(D) burial policies;

- (E) funeral expenses; or
- (F) home insurance coverage or deductibles.

§51.515. Record Keeping.

(a) General record-keeping requirements. The provider must maintain records according to:

- (1) Chapter 49 of this title (relating to Contracting for Community Care Services);
- (2) Chapter 69 of this title (relating to Contract Administration); and
- (3) the terms of the contract.

(b) Program-specific records. The provider must maintain records that demonstrate compliance with the requirements of this chapter.

(c) Financial records. The provider must maintain financial records:

- (1) to support billing for payment under §51.507 of this chapter (relating to Reimbursement);
- (2) to document the receipt of the reimbursement. The documentation must include:

- (A) the amount of the reimbursement;
- (B) the voucher number;
- (C) the warrant number;
- (D) the date of receipt; and

(E) any other information necessary to trace deposits of reimbursements and payment made from the reimbursements in the provider's accounting system (if applicable); and

(3) in accordance with generally accepted accounting principles (GAAP) and DADS procedures. A provider's financial records must include the following, as applicable:

- (A) deposit slips, bank statements, cancelled checks, and receipts;
- (B) purchase orders;
- (C) invoices;
- (D) journals and ledgers;
- (E) payroll and tax records;
- (F) service delivery documentation;
- (G) Internal Revenue Service and Department of Labor records and other government records and forms;
- (H) records of insurance coverage, claims, and payments (for example, medical, liability, fire and casualty, and workers' compensation);
- (I) equipment inventory records;
- (J) records of the provider's internal accounting procedures;
- (K) chart of accounts, as defined by GAAP; and
- (L) records of the provider's company policies.

(d) Subcontractor records. The provider must maintain invoices, contracts, and service delivery records on all subcontractors. Maintenance of all records to support claims is the responsibility of the provider.

(e) Failure to maintain records. Failure to maintain records as required in this section may result in:

- (1) corrective action plans;
- (2) vendor hold as described in §49.61(b) of this title (relating to Sanctions); or
- (3) other action that DADS deems necessary or appropriate.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Phoebe Knauer

General Counsel

Department of Aging and Disability Services

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## CHAPTER 95. MEDICATION AIDES-- PROGRAM REQUIREMENTS

**40 TAC §§95.101, 95.103, 95.107, 95.109, 95.111, 95.113, 95.115, 95.117, 95.119, 95.121, 95.123, 95.125, 95.127, 95.128**

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), to amend §95.101, concerning purpose and definitions; §95.103, concerning requirements for administering medications; §95.107, concerning training requirements, nursing graduates, and reciprocity; §95.109, concerning application procedures; §95.111, concerning examinations; §95.113, concerning determination of eligibility; §95.115, concerning permit renewal; §95.117, concerning notification of changes; §95.119, concerning training program requirements; §95.121, concerning permitting of persons with criminal backgrounds; §95.123, concerning violations, complaints, and disciplinary actions; §95.125, concerning requirements for correctional institutions; §95.127, concerning application processing; and §95.128, concerning home health medication aides, in Chapter 95, Medication Aides--Program Requirements.

The purpose of the proposed amendments is, in part, to implement legislation enacted by the 78th Texas Legislature regarding medication aides in facilities and to reflect current DADS procedures. The amendments also correct references to statutes, other rules, and agency names.

Throughout the proposal, the name of the Texas Department of Human Services is amended to reflect the name of the agency that now administers the medication aide permit program, which is the Department of Aging and Disability Services. The proposal also replaces references to the Board of Vocational Nurse Examiners with the Board of Nurse Examiners for the State of Texas, and corrects the statutory citation governing medication aides in facilities from Health and Safety Code, Chapter 242, Subchapter F, to Health and Safety Code, Chapter 242, Subchapter N.

The amendments to §95.107 and §95.111 amend the due dates for various actions in the permit application and renewal

processes from "within 45 days" to "by the date given" to reflect actual DADS procedures. Proposed §95.109(c)(1)(C) and §95.115(c)(2) - (5) expand the permit renewal fee structure to institute late renewal fees for a permit holder who applies to renew his permit less than one year after his permit has expired or who wishes to reinstate his permit after working as a medication aide in another state. The amendment to §95.111 also establishes DADS' procedures for notifying an applicant of the results of an examination and allows an applicant who fails an exam to request an analysis of his performance on the exam.

The proposed amendment to §95.115: (1) establishes DADS' procedure for a staggered licensing renewal system and removes references to all permits expiring on December 31 of each year; (2) prohibits a person whose permit has expired from working as a medication aide until the permit has been renewed; (3) allows a permit holder to renew an unexpired permit by paying the renewal fee to DADS before the expiration date; (4) provides a time frame and fee structure for assessing late renewal fees; and (5) changes the permissible time period for permit renewal from up to two years after expiration to no more than one year after expiration.

The amendment to §95.123(c) establishes DADS' procedures for revoking, suspending, or refusing to renew a permit for a permit holder who violates Health and Safety Code, Chapter 242, Subchapter N, or the rules governing medication aides, and for placing on probation a person whose permit is suspended.

The proposed amendments to §95.109 and §95.128(n) require payment of an application fee or a renewal fee by cashier's check or money order only and delete references in §95.128 to procedures to be followed if a personal check is not honored by a financial institution.

Gordon Taylor, DADS Chief Financial Officer, has determined that, for each of the first five years the proposed amendments are in effect, there are fiscal implications for state government as a result of enforcing or administering the amended sections. There are no foreseeable implications relating to costs or revenues of local governments.

The effect on state government for the first five years the sections are in effect is an estimated additional cost of \$16,400 in fiscal year (FY) 2006, \$0 in FY 2007, \$0 in FY 2008, \$0 in FY 2009, and \$0 in FY 2010; and an estimated increase in revenue of \$41,895 in FY 2006, \$41,895 in FY 2007, \$41,895 in FY 2008, \$41,895 in FY 2009, and \$41,895 in FY 2010.

Veronda Durden, DADS Assistant Commissioner for Regulatory Services, has determined that, for each year of the first five years the amendments are in effect: (1) the public benefit expected as a result of enforcing the amended sections is the promulgation of rules that reflect current agency names and DADS procedures for permitting medication aides, and that are consistent with Health and Safety Code, Chapter 242, Subchapter N; and (2) the late renewal fees required in §95.115(c) will impose an economic cost on active medication aides who are eligible for permit renewal but who fail to renew their permits by the expiration date.

DADS has determined that: (1) there is no adverse economic effect on small businesses or micro-businesses as a result of enforcing or administering the amendments, because the proposal does not affect small businesses or micro-businesses; (2) the amendments will not affect a local economy; and (3) the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action

and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

Questions about the content of this proposal may be directed to Lynette Sanders at (512) 231-5810 in DADS' Licensing and Credentialing Section. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-013, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The amendments are proposed under the Texas Government Code, §531.0055, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Health and Safety Code, Chapter 142, Subchapter B, which authorizes DADS to regulate the administration of medication by home and community support services agencies, including the regulation of medication aides who are employed by home and community support services agencies; and Health and Safety Code, Chapter 242, Subchapter N, which authorizes DADS to regulate the administration of medication in nursing and other facilities, including the regulation of medication aides in nursing and other facilities.

The amendments implement the Texas Government Code, §531.0055; the Human Resources Code, §161.021; and the Health and Safety Code, §§142.021 - 142.030 and §§242.601 - 242.614.

#### *§95.101. Introduction.*

(a) Purpose. The purpose of this chapter is to implement the provisions of the:

(1) Health and Safety Code, Chapter 242, Subchapter N [F], concerning the administration of medications to facility residents; and

(2) Health and Safety Code, Chapter 142, Subchapter B, concerning the administration of medication by a home and community support services agency.

(b) Definitions. The following words and terms, when used in this chapter, ~~must~~ have the following meanings, unless the context clearly indicates otherwise.

(1) (No change.)

(2) BNE--Board of Nurse Examiners for the State of Texas.

(3) DADS--Department of Aging and Disability Services.

(4) ~~[(2)] Examination--A written competency evaluation for medication aides administered by DADS [the Texas Department of Human Services (DHS)].~~

(5) ~~[(3)] Facility--An institution licensed under the Health and Safety Code, Chapter 242; a state school as defined in the Health and Safety Code, §531.002(17) [Texas Civil Statutes, Article 5547-201, §1.02(16)]; a correctional institution as established under the jurisdiction of the Texas Department of Criminal Justice; an intermediate care facility for persons with mental retardation operated by a community mental retardation center established under Health and Safety Code, Chapter 534 [a mental health and mental retardation program that is operated under the jurisdiction of the Texas Department of Mental~~

Health and Mental Retardation (TDMHMR) and that meets the criteria in §95.103(b) of this title (relating to Requirements for Administering Medications)]; or an assisted living facility [and a personal care facility] licensed under the Health and Safety Code, Chapter 247; that meets the criteria in §95.103(b) of this title (relating to Requirements for Administering Medications)].

(6) [(4)] Licensed nurse--A [An individual licensed as a] licensed vocational nurse or a licensed registered nurse.

(7) [(5)] Licensed vocational nurse--A person licensed by the BNE, or who holds a license from another state recognized by the BNE, to practice vocational nursing in Texas [nurse who is currently licensed by the Board of Vocational Nurse Examiners for the State of Texas].

(8) [(6)] Medication aide--A person permitted by DADS [DHS] to administer medications to facility residents or to persons served by home and community support services agencies.

(9) [(7)] Misappropriation of resident property--The deliberate misplacement, exploitation, or wrongful [;] temporary or permanent use of a resident's belongings or money without the resident's consent.

(10) [(8)] Neglect--The failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness.

(11) [(9)] Non-licensed direct care staff--Employees of facilities other than Medicare- skilled nursing facilities or Medicaid nursing facilities who are primarily involved in the delivery of services to assist with residents' activities of daily living or [and/or] active treatment programs.

(12) [(10)] Nurse aide--An individual who [certified to provide nursing or nursing-related services to residents in a facility under the supervision of a licensed nurse. This individual] has completed a nurse aide training and competency evaluation program (NATCEP) approved by the state as meeting the requirements of the Code of Federal Regulations (CFR), Chapter 42, §§483.151 - 483.154, or has been determined competent as provided in 42 CFR, §483.150(a) and (b), and is listed as certified on DADS' [the] nurse aide registry [of DHS]. [This definition does not include an individual who is a licensed health professional, a registered dietitian, a non-licensed direct staff person, or who volunteers such services without monetary compensation.]

(13) [(11)] Registered nurse (RN)--A person licensed by the BNE, or who holds a license from another state recognized by the BNE, [An individual currently licensed by the Texas Board of Nurse Examiners] to practice professional nursing in Texas.

(14) [(12)] Registered pharmacist--An individual currently licensed by the Texas Board of Pharmacy to practice pharmacy.

(15) [(13)] Training program--A program approved by DADS [DHS] to instruct individuals to act as medication aides.

*§95.103. Requirements for Administering Medications.*

(a) (No change.)

(b) Supervision and applicable law and rules. A permit holder must function under the direct supervision of a licensed nurse on duty or on call by the facility using the permit holder. A permit holder must:

(1) (No change.)

(2) comply with DADS [Texas Department of Human Services (DHS)] rules applicable to personnel used in a facility.

(c) Governmental employees. Governmental employees may receive a permit to administer medications under this chapter as authorized by Health and Safety Code, §242.610(f) [§242.154(f)]:

(1) State school employees and employees of an intermediate care facility for persons with mental retardation operated by a community mental retardation center established under Health and Safety Code, Chapter 534 [mental health and mental retardation programs operated under the jurisdiction of the Texas Department of Mental Health and Mental Retardation (TDMHMR)] must comply with subsection (b) of this section and §§95.105, 95.107, 95.109, 95.111, 95.113, 95.115, 95.117, 95.119, 95.121, and 95.123 of this title (relating to Allowable and Prohibited Practices of a Permit Holder; Training Requirements, Nursing Graduates, Reciprocity; Application Procedures; Examination; Determination of Eligibility; Permit Renewal; Changes; Training Program Requirements; Permitting of Persons with Criminal Backgrounds; and Violations, Complaints, and Disciplinary Actions).

(2) (No change.)

(d) (No change.)

(e) Exemptions [Other exemptions].

(1) A person may administer medication to a resident in a facility without the license or permit as required in subsection (a) of this section, if the person is:

(A) - (B) (No change.)

(C) a graduate vocational nurse holding a temporary permit issued by the BNE [Board of Vocational Nurse Examiners];

(D) (No change.)

(E) a trainee in a medication aide training program approved by DADS [DHS] under this chapter who is administering medications as part of the trainee's clinical experience.

(2) - (3) (No change.)

*§95.107. Training Requirements; Nursing Graduates; Reciprocity.*

(a) Each applicant for a permit issued under Health and Safety Code, Chapter 242, Subchapter N [F], must complete a training program unless the applicant meets the requirements of subsection (c) or (d) of this section.

(b) (No change.)

(c) A person who is attending or has attended an accredited school of nursing and who does not hold a license to practice professional or vocational nursing meets the training requirement for issuance of a permit under this chapter if the person:

(1) (No change.)

(2) successfully completed courses at the nursing school that [which] cover DADS' [the Texas Department of Human Services' (DHS's)] curriculum for a medication aide training program;

(3) submits a statement on the form provided by DADS that [DHS which] is signed by the nursing school's administrator or other authorized individual and certifies that the person completed the courses specified in paragraph (2) of this subsection. The administrator is responsible for determining that the courses he certifies cover DADS' [DHS's] curriculum. The statement must be submitted with the person's application for a permit and permit application fee as provided in §95.109 of this title (relating to Application Procedures); and

(4) (No change.)



(d) A person who is a graduate of an accredited school of nursing and who does not hold a license to practice professional or vocational nursing meets the training requirement for issuance of a permit under this chapter provided the date of graduation from the nursing school was no earlier than January 1 of the year immediately preceding the year of application for a permit under this chapter.

(1) The graduate must submit an [An] official application form [must be submitted] to DADS [DHS by the graduate]. The applicant must meet the requirements of subsection (b)(1) - (4) of this section.

(2) - (3) (No change.)

(4) DADS acknowledges [DHS must acknowledge] receipt of the application by sending [forwarding to] the applicant a copy of this chapter and DADS' [DHS's] open book examination.

(5) The applicant must complete the open book examination and return it to DADS by the date given in the examination notice [within 45 days to DHS].

(6) The applicant must complete DADS' [DHS's] written examination. DADS denies the application of an [Any] applicant failing to schedule and take the examination by the date given in [within 45 days of] the examination notice [may have his application voided].

(7) An open-book or written examination may [must] not be retaken if the applicant fails.

(8) Upon successful completion of the two examinations, DADS evaluates [DHS must evaluate] all application documents submitted by the applicant.

(9) DADS notifies [DHS must notify] the applicant in writing of the examination results.

(e) A person who holds a valid license, registration, certificate, or permit as a medication aide issued by another state whose minimum standards or requirements are substantially equivalent to or exceed the requirements of this chapter in effect at the time of application, may request a waiver of the training program requirement as follows: [-]

(1) The applicant must submit an [An] official application form [must be submitted] to DADS [DHS by the applicant]. The applicant must meet the requirements of subsection (b)(1) - (4) of this section.

(2) The application must be accompanied by the permit application fee required [as set out] in §95.109(c) of this title [(relating to Application Procedures)].

(3) The application must include a current copy of the rules of the other state governing its licensing and regulation of medication aides, a copy of the legal authority (law, act, code, or other) for the state's licensing program, and a certified copy of the license or certificate for [by] which the reciprocal permit is requested.

(4) DADS acknowledges [DHS must acknowledge] receipt of the application by sending [forwarding to] the applicant a copy of this chapter and DADS' [DHS's] open book examination.

(5) DADS [DHS] may contact the issuing agency to verify the applicant's status with the agency.

(6) The applicant must complete DADS' [DHS's] open-book examination and return it to DADS by the date given in the examination notice [within 45 days to DHS].

(7) The applicant must complete DADS' [DHS's] written examination. The site of the examination is [will be] determined by

DADS [DHS]. DADS denies the application of an [Any] applicant failing to schedule and take the examination by the date given in [within 45 days of] the examination notice [may have his application voided].

(8) An open-book or written examination may [must] not be retaken if the applicant fails.

(9) Upon successful completion of the two examinations, DADS evaluates [DHS must evaluate] all application documents submitted by the applicant.

(10) DADS notifies [DHS must notify] the applicant in writing of the examination results.

#### §95.109. Application Procedures.

(a) An applicant under §95.107(a) of this title (relating to Training Requirements; Nursing Graduates; Reciprocity) must submit to DADS [the Texas Department of Human Services (DHS)], no later than 30 days after enrollment in a training program, an application, including all required information and documentation on DADS [official DHS] forms.

(b) DADS considers [DHS will consider] an application under subsection (a) of this section as officially submitted when DADS receives [the applicant submits] the permit application and examination fee.

(c) Payment of fees must be by cashier's check or money order made payable to the [Texas] Department of Aging and Disability [Human] Services. All fees are nonrefundable, except as provided by Government Code, Chapter 2005 [Texas Civil Statutes, Article 6252-13(b)(1)].

(1) The fee schedule is as follows:

(A) (No change.)

(B) renewal fee - \$15; [and]

(C) late renewal fees for permit renewals made after the permit expires:

(i) \$22.50 for an expired permit renewed from one to 90 days after expiration;

(ii) \$30 for an expired permit renewed from 91 days to one year after expiration;

(iii) \$30 for a former permit holder who meets the criteria in §95.115(c)(5) of this title (relating to Permit Renewal); and

(D) [(C)] permit replacement fee - \$5.00.

(2) (No change.)

(d) All applicants must submit the following application materials.

(1) The general statement enrollment form must contain:

(A) - (D) (No change.)

(E) a statement that the applicant understands that it is a misdemeanor to falsify any information submitted to DADS [DHS]; and

(F) (No change.)

(2) (No change.)

(e) DADS sends [DHS will send] a notice listing the additional materials required to an applicant who does not complete the application [in a timely manner]. An application not completed by the day of the medication aide final exam must be voided.

(f) DADS sends notice [Notice] of application acceptance or ineligibility, disapproval, or deficiency [must be] in accordance with §95.127 of this title (relating to Application Processing).

§95.111. Examination.

(a) DADS gives a [A] written examination [must be given by the Texas Department of Human Services (DHS)] to each applicant at a site determined by DADS [DHS].

(1) The [A final examination may not be given to an applicant until the] applicant must meet [has met] the requirements of §95.107 of this title (relating to Training Requirements; Nursing Graduates; Reciprocity) and §95.109 of this title (relating to Application Procedures) before taking the written examination.

(2) The applicant is [must be] tested on the subjects taught in the training program curricula and clinical experience. The examination covers [must cover] an applicant's knowledge of accurate and safe drug therapy that will [as it is to] be administered to a facility's residents.

(3) (No change.)

(4) Staff of a training program must notify DADS [DHS] at least four weeks prior to its requested examination date.

(5) DADS determines [DHS must determine] the passing grade on the examination.

(6) If DADS grades or reviews the examination, DADS notifies the applicant of the results of the examination not later than the 30th day after the date the applicant took the examination.

(7) If a testing service grades or reviews the examination:

(A) DADS notifies the applicant of the results of the examination not later than the 14th day after the date DADS receives the results from the testing service; and

(B) if notice of the examination results will be delayed for longer than 90 days after the examination date, DADS notifies the applicant of the reasons for the delay before the 90th day.

(8) DADS may require a testing service to notify an applicant of the results of the applicant's examination.

(9) [(6)] DADS notifies in writing an [An] applicant who fails the examination [must be notified in writing by DHS].

(A) DADS may give an [An] applicant under §95.107(a) of this title one [(relating to Training Requirements; Nursing Graduates; Reciprocity) may be given a] subsequent examination, without additional payment of a fee, upon the applicant's written request to DADS [DHS].

(B) A subsequent examination must be completed by [within 45 days from] the date given in [of] the failure notification. The site of the examination is [must be] determined by DADS [DHS].

(C) DADS gives no further examinations [Another examination must not be permitted] if the student fails the subsequent examination, unless the student enrolls in and successfully completes another training program.

(D) If requested in writing by an applicant who fails the examination, DADS furnishes the applicant with an analysis of the applicant's performance on the examination.

(b) An applicant who is unable to attend the applicant's scheduled examination due to unforeseen circumstances may be given an examination at another time without payment of an additional fee upon the applicant's written request to DADS [DHS]. The examination must be completed within 45 days from the date of the originally scheduled

examination. The rescheduled examination must be at a site determined by DADS [DHS].

(c) An applicant[;] whose application for a permit must be denied under §95.113 of this title (relating to Determination of Eligibility) [;] is ineligible to take the examination.

§95.113. Determination of Eligibility.

(a) DADS approves or denies each application for a permit [The Texas Department of Human Services (DHS) must receive and approve or deny all applications].

(b) (No change.)

(c) DADS denies an [An] application for a permit [must be denied] if the person has:

(1) (No change.)

(2) failed to pass the examination prescribed by DADS [DHS], as set out in §95.111 of this chapter (relating to Examination);

(3) failed to or refused to properly complete or submit any application form or fee or deliberately presented false information on any form or document required by DADS [DHS];

(4) violated or conspired to violate the Health and Safety Code, Chapter 242, Subchapter N [F], or any provision of this chapter; or

(5) (No change.)

(d) If , after review, DADS [DHS] determines that the application should not be approved, DADS gives [DHS must give] the applicant written notice of the reason for the proposed decision and of the opportunity for a formal hearing in accordance with §95.123(c)(3) [§95.123(e)] of this title (relating to Violations, Complaints, and Disciplinary Actions).

§95.115. Permit Renewal.

(a) General.

(1) When issued, an initial permit is valid for 12 months from the date of issue [until the end of the calendar year (December 31st)].

(2) (No change.)

(3) Each permit holder is responsible for renewing the permit before the expiration date[; the last day of December]. Failure to receive notification from DADS [the Texas Department of Human Services (DHS)] prior to the expiration date of the permit does [must] not excuse the permit holder's failure to file for timely renewal.

(4) A permit holder must complete a seven-clock-hour continuing education program approved by DADS [DHS] prior to expiration of the permit in order to renew the permit. Continuing education hours are not required for the first renewal. After a permit is renewed for the first time, the permit holder must earn [begin earning] approved continuing education hours to have the permit renewed again.

(5) DADS denies [DHS must deny] renewal of the permit of a permit holder who is in violation of Health and Safety Code, Chapter 242, Subchapter N [F], or this chapter at the time of application for renewal.

(6) A person whose permit has expired may not engage in activities that require a permit until the permit has been renewed.

(b) Permit renewal procedures.

(1) After receiving proof of the successful completion of the seven-clock-hour continuing education requirement, DADS sends

[DHS will send] to the permit holder, at the address listed in DADS' [DHS's] records, notice of the expiration date of the permit and the amount of the renewal fee due and a renewal form that [which] the permit holder must complete and return with the required renewal fee. If DADS [DHS] does not receive proof of the successful completion of the continuing education requirement, DADS sends [DHS will send] the permit holder a reminder notice about the required continuing education hours.

(2) The renewal form includes [must include] the preferred mailing address of the permit holder and information on certain misdemeanor and felony convictions. It must be signed by the permit holder.

(3) DADS issues [DHS must issue] a renewal permit to a permit holder who has met all requirements for renewal.

(4) A person who is otherwise eligible to renew a permit may renew an unexpired permit by paying the required renewal fee to DADS before the expiration date of the permit [A permit must not be renewed if the permit holder does not complete the required seven-clock-hour continuing education requirement. Successful completion must be determined by the student's instructor. An individual who does not meet the continuing education requirement must complete a new program; application; and examination in accordance with the requirements of this chapter].

(c) Late renewal procedures.

(1) A person whose permit has been expired for less than one year [two years] may renew the permit by submitting to DADS [DHS]:

(A) - (B) (No change.)

(C) proof of having earned, during the expired period, seven hours in an approved continuing education program for each year, or part of a year, since the permit [was last renewed or] expired; and

(D) (No change.)

(2) A person whose permit has been expired for 90 days or less must pay DADS the late renewal fee stated in §95.109(c)(1)(C)(i) of this title (relating to Permit Renewal) [A permit that is not renewed during the two years after expiration may not be renewed].

(3) A person whose permit has been expired for more than 90 days but less than one year must pay DADS the late renewal fee stated in §95.109(c)(1)(C)(ii) of this title.

(4) A person whose permit has been expired for one year or more may not renew the permit. The person may obtain a new permit by complying with the requirements and procedures, including the examination requirements, for obtaining an original permit.

(5) A person who previously held a permit in Texas may obtain a new permit without reexamination if the person holds a permit from another state, practiced in that state for at least the two years preceding the application date, and pays to DADS the late renewal fee stated in §95.109(c)(1)(C)(iii) of this title.

(d) (No change.)

#### §95.117. *Changes.*

(a) A permit holder must notify DADS [Notification of changes must be reported to the Texas Department of Human Services (DHS)] within 30 days after changing his or her [a change of] address or name.

(b) DADS replaces [DHS must replace] a lost, damaged, or destroyed permit upon receipt of a completed duplicate permit request form and permit replacement fee as set out in §95.109(c) of this title (relating to Application Procedures).

#### §95.119. *Training Program Requirements.*

(a) Application. An educational institution accredited by the Texas Workforce Commission [Education Agency] or Texas Higher Education Coordinating Board that [which] desires to offer a training program must file an application for approval on a DADS [an official] form. Programs sponsored by state agencies for the training and preparation of their own employees are exempt from the accreditation requirement. An approved institution may offer the training program and a continuing education program.

(1) All signatures on DADS [official] forms and supporting documentation must be originals.

(2) The application must include:

(A) - (D) (No change.)

(E) an outline of the program content and curriculum if the curriculum covers more than DADS' [the Texas Department of Human Services' (DHS's)] established curricula.

(3) DADS [DHS] may conduct an inspection of the classroom site.

(4) DADS sends notice [Notice] of approval or proposed denial of the application [must be given] to the program within 30 days of the receipt of a complete application. If DADS proposes to deny the application [is proposed to be denied] due to noncompliance with the requirements of Health and Safety Code, Chapter 242, Subchapter N [F], or this chapter, the reasons for denial are [must be] given in the notice.

(5) An applicant may request in writing a hearing on a proposed denial within 10 days of receipt of the notice of the proposed denial. The hearing is conducted [must be] in accordance with 1 TAC §§357.481 - 357.490 [DHS's formal hearing procedures under §§79.1601 - 79.1614 of this title (relating to Formal Hearings)] and [the Administrative Procedures Act (APA), Title 10 of the] Texas Government Code, Chapter 2001 [§§2001.051 et seq]. If no request is made, the applicant has [is deemed to have] waived the opportunity for a hearing, and the proposed action may be taken.

(b) Basic training program.

(1) (No change.)

(2) The program must consist of 140 hours in the following sequence: 100 hours of classroom instruction and training, 20 hours of return skills demonstration laboratory, 10 hours of clinical experience including clinical observation and skills demonstration under the direct supervision of a licensed nurse in a facility, and 10 more hours in the return skills demonstration laboratory [in the preceding order]. A classroom or laboratory hour must include [constitute] 50 clock minutes of actual classroom or laboratory time.

(A) - (B) (No change.)

(3) Each program must follow the curricula established by DADS [DHS].

(4) At least seven days prior to the beginning of each program, the coordinator must notify DADS [DHS] in writing of the dates and daily hours of the program, and the projected number of students.

(5) A change in any information presented by the program in an approved application including, but not limited to, location, instructorship, and content must be approved by DADS [DHS] prior to the program's effective date of the change.

(6) The program instructors of the classroom hours must be a registered nurse and registered pharmacist.

(A) The nurse instructor must have a minimum of two years of experience in caring for individuals ~~[the elderly, chronically ill, mentally retarded, and/or other persons]~~ in a long-term care setting or be an ~~an~~ instructor in a school of nursing ~~[may request a waiver of the experience requirement]~~.

(B) (No change.)

(7) - (8) (No change.)

(9) Each program must inform DADS on the DADS class roster form ~~[DHS]~~ of the final grade results for each student within 15 days after ~~[of]~~ completion of the course. ~~[The official DHS class roster form must be used and signed by the coordinator.]~~

(c) Continuing education training program.

(1) (No change.)

(2) The instructors must meet the requirements in subsection (b)(6) of this section ~~[§95.119(b)(6) of this title (relating to Training Program Requirements)]~~.

(3) Each program must follow the curricula established by DADS ~~[DHS]~~.

(4) Within 15 days after completion of the course, each ~~[Each]~~ program must inform DADS on the DADS class roster form ~~[DHS]~~ of the name of each permit holder who has completed ~~[completes]~~ the course ~~[within 15 days: The official DHS class roster form must be used and signed by the coordinator]~~.

#### *§95.121. Permitting of Persons with Criminal Backgrounds.*

DADS ~~[The Texas Department of Human Services (DHS)]~~ may suspend or revoke an existing permit, disqualify a person from receiving a permit, or deny to a person the opportunity to be examined for a permit because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of a medication aide.

(1) In considering whether a criminal conviction directly relates to the occupation of a medication aide, DADS ~~considers~~ ~~[DHS must consider]~~:

(A) - (C) (No change.)

(D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a medication aide. In determining the present fitness of a person, DADS ~~considers~~ ~~[DHS must consider]~~ the evidence described in the Occupations Code, §53.023 ~~[Texas Civil Statutes, Article 6252-13c, §4(e)]~~.

(2) DADS ~~gives~~ ~~[DHS must give]~~ written notice to the person that DADS ~~[DHS]~~ proposes to deny the application or suspend or revoke the permit after a hearing in accordance with the provisions of §95.123(c)(3) ~~[§95.123(e)]~~ of this title (relating to Violations, Complaints, and Disciplinary Actions). If DADS ~~[DHS]~~ denies, suspends, or revokes an application or permit under this chapter, DADS ~~gives~~ ~~[DHS must give]~~ the person written notice:

(A) (No change.)

(B) that the person, after exhausting administrative appeals, may file an action in a district court of Travis County for review of the evidence presented to DADS ~~[DHS]~~ and its decision; ~~and~~

(C) that the person must begin the judicial review by filing a petition with the court within 30 days after DADS' ~~[DHS's]~~ action is final and appealable; ~~[; and]~~

~~[(D) of the earliest date that the person may appeal.]~~

#### *§95.123. Violations, Complaints, and Disciplinary Actions.*

(a) Filing of complaints. Any person may complain to DADS ~~[the Texas Department of Human Services (DHS)]~~ alleging that a person or program has violated the Health and Safety Code, Chapter 242, Subchapter N, ~~[eode]~~ or this chapter.

(1) Persons who want to file a complaint against a permit holder, training program, or another person, must notify DADS by calling 1-800-458-9858 or by ~~[DHS in]~~ writing the ~~[; The mailing address is]~~ Medication Aide Permit Program, ~~[Texas]~~ Department of Aging and Disability ~~[Human]~~ Services, P.O. Box 149030, Mail Code Y-979, Austin, Texas 78714-9030.

~~[(2) Upon receipt of a complaint, DHS must send to the complainant DHS's complaint form, which the complainant must complete and return to DHS before further action can be taken.]~~

~~[(2) [(3)] Anonymous complaints may be investigated by DADS [DHS] if the complainant provides sufficient information.~~

(b) Investigation of complaints. If DADS' ~~[DHS's]~~ initial investigation determines:

(1) the complaint does not come within DADS' ~~[DHS's]~~ jurisdiction, DADS ~~advises~~ ~~[DHS must advise]~~ the complainant and, if possible, ~~refers~~ ~~[refer]~~ the complainant to the appropriate governmental agency for handling the complaint;

(2) there are insufficient grounds to support the complaint, DADS ~~dismisses~~ ~~[DHS must dismiss]~~ the complaint and ~~gives~~ ~~[give]~~ written notice of the dismissal to the permit holder or person against whom the complaint has been filed and the complainant; ~~or [and]~~

(3) there are sufficient grounds to support the complaint, DADS ~~[DHS]~~ may propose to deny, suspend, emergency suspend, revoke, or not renew a permit or to rescind program approval.

(c) Disciplinary actions. DADS ~~revokes, suspends, or refuses to renew a permit or reprimands a permit holder for a violation of Health and Safety Code, Chapter 242, Subchapter N, or this chapter. In addition, DADS may suspend a permit in an emergency or rescind training program approval [DHS may deny an application or permit renewal, suspend or revoke a permit, or rescind program approval for any violation of the code or this chapter]~~.

(1) DADS may place on probation a person whose permit is suspended. DADS may require the person on probation:

(A) to report regularly to DADS on matters that are the basis of the probation;

(B) to limit practice to the areas prescribed by DADS; ~~or~~

(C) to continue or pursue professional education until the person attains a degree of skill satisfactory to DADS in those areas that are the basis of the probation.

(2) ~~[(4)]~~ Prior to institution of formal proceedings to revoke or suspend a permit or rescind program approval, DADS ~~gives~~ ~~[DHS must give]~~ written notice to the permit holder or program of the facts or conduct alleged to warrant revocation, suspension, or rescission, and the permit holder or program must be given an opportunity, as described in the notice, to show compliance with all requirements of the Health and Safety Code, Chapter 242, Subchapter N, and this chapter. When there is a finding of an alleged act of abuse, neglect, or misappropriation of resident property by a permit holder employed at a Medicaid-certified nursing facility or a Medicare-certified skilled nursing facility, DADS ~~complies~~ ~~[DHS must comply]~~ with the hearings process as provided in 42 Code of Federal Regulations §488.335 ~~[488.335]~~.

(3) [(2)] If denial, revocation, or suspension of a permit or rescission of program approval is proposed, DADS gives [DHS must give] written notice that the permit holder or program must request, in writing, a formal hearing within 30 days of receipt of the notice, or the right to a hearing is [must be] waived and the permit is [must be] denied, revoked, or suspended or the program approval is [must be] rescinded.

(4) [(3)] The formal hearing is [must be] conducted according to [DHS's] formal hearing procedures at 1 TAC §§357.481 - 357.490 [under §§79.1601 - 1614 of this title (relating to Formal Hearings) and §§76.101 - 76.108 of this title (relating to Criminal History Check of Employees in Facilities for Care of the Aged and Persons with Disabilities), if applicable].

(5) [(4)] If an alleged act of abuse, neglect, or misappropriation by a medication aide who also is a certified nurse aide under the provisions of Chapter 94 of this title (relating to Nurse Aides) violates the rules in this chapter and Chapter 94, DADS complies [DHS must comply] with the formal hearing process described [as required] in paragraph (4) [(3)] of this subsection. Through the formal hearing, determinations will be made on both the permit for medication aide practice and the certificate for nurse aide practice.

(d) Suspension, revocation, or nonrenewal. If DADS [DHS] suspends a permit, the suspension remains [must remain] in effect until DADS [DHS] determines that the reason for suspension no longer exists or DADS revokes or determines not to renew the permit. DADS investigates [DHS must investigate] prior to making a determination, and:

(1) during the time of suspension, the suspended permit holder must return his permit to DADS [DHS];

(2) if a suspension overlaps a permit renewal date, the suspended permit holder may comply with the renewal procedures in §95.115 of this title (relating to Permit Renewal); however, DADS does [DHS may] not renew the permit until DADS [DHS] determines that the reason for suspension no longer exists;

(3) if DADS [DHS] revokes or does not renew a permit, a person may reapply for a permit by complying with the requirements and procedures in this chapter at the time of reapplication. DADS [DHS] may refuse to issue a permit if the reason for revocation or nonrenewal continues to exist; and

(4) if a permit is revoked or not renewed [upon revocation or nonrenewal], a permit holder must immediately return the permit to DADS [DHS].

#### §95.125. *Requirements for Correctional Institutions.*

(a) - (b) (No change.)

(c) Allowable and prohibited practices of a permit holder.

(1) (No change.)

(2) Permit holders must not:

(A) - (H) (No change.)

(I) violate any provision of the Health and Safety Code, Chapter 242, Subchapter N [F], or this chapter;

(J) - (L) (No change.)

(d) Application. An employee of a correctional institution or an employee of a medical services contractor for a correctional institution must submit an official application form to DADS [the Texas Department of Human Services (DHS)]. An application for a permit must be made in accordance with §95.109(b) and (c) of this title (relating to Application Procedures).

(e) Examination procedures. DADS gives a [A] written examination [must be given by DHS] to each applicant at a site determined by DADS [DHS]. Examination provisions for employees of correctional institutions must comply with §95.111 of this title (relating to Examination).

(f) Determination of eligibility. DADS determines [DHS must determine] eligibility according to §95.113(a), (b), (c)(3) - (5), and (d) of this title (relating to Determination of Eligibility) and subsections (d) [(d)(2)] and (e) [(e)(2)] of this section.

(g) - (j) (No change.)

#### §95.127. *Application Processing.*

(a) Time periods. DADS complies [The Texas Department of Human Services (DHS) must comply] with the following procedures in processing applications for a permit and renewal.

(1) - (2) (No change.)

(b) Reimbursement of fees.

(1) In the event an application is not processed in the time periods stated in subsection (a) of this section, the applicant has the right to request reimbursement of all fees paid in that particular application process. Application for reimbursement must be made to the program administrator for DADS' [DHS's] Medication Aide Permit Program. If the program administrator does not agree that the time period has been violated or finds that good cause existed for exceeding the time period, the request must be denied.

(2) Good cause for exceeding the time period exists [is considered to exist] if the number of applications for a permit and permit renewal exceeds by 15% or more the number of applications processed in the same calendar quarter the preceding year; another public or private entity relied upon by DADS [DHS] in the application process caused the delay; or any other condition exists giving DADS [DHS] good cause for exceeding the time period.

(c) Appeal. If a request for reimbursement under subsection (b) of this section is denied by the program administrator, the applicant may appeal in writing to the Texas Health and Human Services Commission's [DHS's] hearings section to request a fair hearing on the reimbursement denial. The hearing will be held pursuant to applicable provisions of the [DHS's] formal hearing procedures at 1 TAC §§357.481 - 357.490 [as provided in §§79.1601 - 79.1614 of this title (relating to Formal Hearings)]. The program administrator must submit a written report of the facts related to the processing of the application and of any good cause for exceeding the applicable time period to DHS. DHS must provide written notice of the decision to the applicant and the program administrator. If the appeal is decided in favor of the applicant, full reimbursement of all fees paid in that particular application process must be made.

[(d) Contested cases. The time periods for contested cases related to the denial of a permit or permit renewals are not included within the time periods stated in subsection (a) of this section. The time period for conducting a contested case hearing runs from the date DHS receives a written request for a hearing and ends when DHS's decision is final and appealable. A hearing may be completed within one to four months, but may extend for a longer period of time depending on the particular circumstances of the hearing.]

#### §95.128. *Home Health Medication Aides.*

(a) General.

(1) A person may not administer medication to a client unless the person:

(A) - (C) (No change.)

(D) administers noninjectable medication under circumstances authorized by the memorandum of understanding between the Board of Nurse Examiners and DADS [the Texas Department of Human Services (DHS)].

(2) (No change.)

(3) Exemptions [~~Other exemptions~~] are as follows.

(A) A person may administer medication to a client of an agency without the license or permit as required in paragraph (1) of this subsection if the person is:

(i) (No change.)

(ii) a student enrolled in an accredited school of nursing or program for the education of RNs [~~Rns~~] who is administering medications as part of the student's clinical experience;

(iii) a graduate vocational nurse holding a temporary permit issued by the BNE [Board of Vocational Nurse Examiners];

(iv) (No change.)

(v) a trainee in a medication aide training program approved by DADS [DHS] under this chapter who is administering medications as part of the trainee's clinical experience.

(B) - (C) (No change.)

(b) Required actions.

(1) - (2) (No change.)

(3) The RN must be knowledgeable of [regarding] the rules of DADS [DHS] governing home health medication aides and must assure that the home health medication aide is in compliance with the Health and Safety Code, Chapter 142, Subchapter B [statute].

(4) A permit holder must:

(A) - (B) (No change.)

(C) comply with DADS [DHS] rules applicable to personnel used in an agency; and

(D) comply with this section and §97.701 [§97.61] of this title (relating to Home Health Aides) if the person will be used as a home health aide and a home health medication aide.

(5) (No change.)

(c) - (d) (No change.)

(e) Applicant qualifications. Each applicant for a permit issued under Health and Safety Code, Chapter 142, Subchapter B [the statute] must complete a training program. Prior to enrollment in a training program and prior to application for a permit under this section, all persons:

(1) - (4) (No change.)

(5) must have satisfactorily completed a home health aide training and competency evaluation program or a competency evaluation program under §97.701 of this title [Chapter §97.61 (relating to Home Health Aides)].

(f) Nursing graduates. A person who is a graduate of an accredited school of nursing and who does not hold a license to practice professional or vocational nursing meets the training requirements for issuance of a permit under this section [;] if the date of graduation from the nursing school was no earlier than January 1 of the year immediately preceding the year of application for a permit under this section.

(1) The applicant must submit a DADS [an official] application form to DADS [DHS]. The applicant must meet the requirements of subsection (e)(1) - (4) of this section.

(2) - (3) (No change.)

(4) DADS [DHS] acknowledges receipt of the application by sending [forwarding to] the applicant a copy of this chapter and DADS' [DHS's] open book examination.

(5) The applicant must complete the open book examination and return it to DADS by the date given in the examination notice [within 45 calendar days to DHS].

(6) The applicant must complete DADS' [DHS's] written examination. DADS [DHS] determines the site of the examination. DADS denies the application of an [Any] applicant failing to schedule and take the examination by the date given in [within 45 calendar days of] the examination notice [may have his or her application voided].

(7) (No change.)

(8) Upon successful completion of the two examinations, DADS [DHS] evaluates all application documents submitted by the applicant.

(9) DADS [DHS] notifies the applicant in writing of the examination results.

(g) Nursing students. A person who is attending or has attended an accredited school of nursing and who does not hold a license to practice professional or vocational nursing meets the training requirements for issuance of a permit under this section if the person:

(1) (No change.)

(2) successfully completed courses at the nursing school that cover DADS' [DHS's] curriculum for a home health medication aide training program;

(3) submits a statement that is signed by the nursing school's administrator or other authorized individual and certifies that the person completed the courses specified under paragraph (2) of this subsection. The administrator is responsible for determining that the courses that [to which] he or she certifies cover DADS' [DHS's] curriculum. The statement must be submitted with the person's application for a permit under this section; and

(4) (No change.)

(h) Reciprocity. A person who holds a valid license, registration, certificate, or permit as a home health medication aide issued by another state whose minimum standards or requirements are substantially equivalent to or exceed the requirements of this section in effect at the time of application may request a waiver of the training program requirement as follows: [;]

(1) The applicant [graduate] must submit a DADS [an official] application form to DADS [DHS]. The applicant must meet the requirements of subsection (e)(1) - (4) of this section.

(2) - (3) (No change.)

(4) DADS [DHS] acknowledges receipt of the application by sending [forwarding to] the applicant a copy of this chapter and of DADS' [DHS's] open book examination.

(5) DADS [DHS] may contact the issuing agency to verify the applicant's status with the agency.

(6) The applicant must complete DADS' [DHS's] open book examination and return it to DADS by the date given in the examination notice [within 45 calendar days to DHS].

(7) The applicant must complete DADS' ~~[DHS's]~~ written examination. The site of the examination is ~~[shall be]~~ determined by DADS [DHS]. DADS denies the application of an [Any] applicant failing to schedule and take the examination by the date given in [within 45 calendar days of] the examination notice [may have his or her application voided].

(8) (No change.)

(9) Upon successful completion of the two examinations, DADS [DHS] evaluates all application documents submitted by the applicant.

(10) DADS [DHS] notifies the applicant in writing of the examination results.

(i) Application by trainees. An applicant under subsection (e) of this section must submit to DADS [DHS], no later than 30 calendar days after enrollment in a training program, an application, including all required information and documentation on DADS [official DHS] forms.

(1) DADS considers [DHS does not consider] an application as officially submitted when DADS receives [until the applicant submits] the nonrefundable combined permit application and examination fee payable to the [Texas] Department of Aging and Disability [Human] Services. The fee required by subsection (n) of this section must accompany the application form.

(2) The general statement enrollment form must contain the following application material that is required of all applicants:

(A) - (D) (No change.)

(E) a statement that the applicant understands that it is a misdemeanor to falsify any information submitted to DADS [DHS]; and

(F) (No change.)

(3) (No change.)

(4) DADS [DHS] sends a notice listing the additional materials required to an applicant who does not complete the application [in a timely manner]. An application not completed within 30 calendar days after the date of the notice will be void.

(5) DADS sends notice [Notice] of application acceptance, disapproval, or deficiency [must be] in accordance with subsection (q) of this section.

(j) Examination. DADS [DHS] gives a written examination to each applicant at a site DADS determines [determined DHS].

(1) - (2) (No change.)

(3) A training program must notify DADS [DHS] at least four weeks prior to its requested examination date.

(4) DADS [DHS] determines the passing grade on the examination.

(5) DADS [DHS] notifies in writing an applicant who fails the examination.

(A) DADS may give an [An] applicant under subsection (e) of this section one [may be given a] subsequent examination, without additional payment of a fee, upon the applicant's written request to DADS [DHS].

(B) A subsequent examination must be completed by the date given on [within 45 calendar days from the date of] the failure notification. DADS [DHS] determines the site of the examination.

(C) (No change.)

(6) An applicant who is unable to attend the applicant's scheduled examination due to unforeseen circumstances may be given an examination at another time without payment of an additional fee upon the applicant's written request to DADS [DHS]. The examination must be completed within 45 calendar days from the date of the originally scheduled examination. DADS [DHS] determines the site for the rescheduled examination.

(7) (No change.)

(k) Determination of eligibility. DADS [DHS receives and] approves or disapproves all applications. DADS sends notices [Notices] of application approval, disapproval, or deficiency [must be] in accordance with subsection (q) of this section.

(1) DADS denies an [An] application for a permit [is disapproved] if the person has:

(A) (No change.)

(B) failed to pass the examination prescribed by DADS [DHS] as set out in subsection (j) of this section;

(C) failed to or refused to properly complete or submit any application form, endorsement, or fee, or deliberately presented false information on any form or document required by DADS [DHS];

(D) violated or conspired to violate the Health and Safety Code, Chapter 142, Subchapter B, [statute] or any provision of this chapter; or

(E) (No change.)

(2) If, after review, DADS [DHS] determines that the application should not be approved, DADS [the director] gives the applicant written notice of the reason for the proposed decision and of the opportunity for a formal hearing in accordance with subsection (r) of this section.

(l) Permit renewal. Home health medication aides must comply with the following permit renewal requirements.

(1) - (3) (No change.)

(4) Each permit holder is responsible for renewing the permit before the expiration date. Failure to receive notification from DADS [DHS] before the expiration date of the permit does not excuse the permit holder's failure to file for timely renewal.

(5) A permit holder must complete a seven clock-hour continuing education program approved by DADS [DHS] prior to expiration of the permit in order to renew the permit. Continuing education hours are not required for the first renewal. After a permit is renewed for the first time, the permit holder must earn approved continuing education hours to have the permit renewed again.

(6) DADS [DHS] denies renewal of the permit of a permit holder who is in violation of the Health and Safety Code, Chapter 142, Subchapter B, [statute] or this chapter at the time of application for renewal.

(7) Home health medication aide permit renewal procedures are as follows.

(A) At least 30 calendar days before the expiration date of a permit, DADS [DHS] sends to the permit holder at the address in DADS' [DHS's] records notice of the expiration date of the permit and the amount of the renewal fee due and a renewal form that the permit holder must complete and return with the required renewal fee.

(B) (No change.)

(C) DADS ~~[DHS]~~ issues a renewal permit to a permit holder who has met all requirements for renewal.

(D) DADS ~~does [DHS will]~~ not renew a permit if the permit holder does not complete the required seven-hour continuing education requirement. Successful completion is determined by the student's instructor. An individual who does not meet the continuing education requirement must complete a new program, application, and examination in accordance with the requirements of this section.

(E) DADS ~~does [DHS will]~~ not renew a permit if renewal is prohibited by the Texas Education Code, §57.491, concerning defaults on guaranteed student loans.

(F) If a permit holder fails to timely renew his or her permit because the permit holder is or was on active duty with the armed forces of the United States of America serving outside the State of Texas, the permit holder may renew the permit pursuant to this subparagraph ~~[subsection]~~.

(i) - (ii) (No change.)

(iii) A copy of the official orders or other official military documentation showing that the permit holder is or was on active military duty serving outside the State of Texas must ~~[should]~~ be filed with DADS ~~[DHS]~~ along with the renewal form.

(iv) A copy of the power of attorney from the permit holder must be filed with DADS ~~[DHS]~~ along with the renewal form if the individual having the power of attorney executes any of the documents required in this subparagraph ~~[subsection]~~.

(v) A permit holder renewing under this subparagraph ~~[subsection]~~ must pay the applicable renewal fee.

(vi) (No change.)

(vii) A permit holder renewing under this subparagraph ~~[subsection]~~ is not required to submit any continuing education hours.

(8) A person whose permit has expired for not more than two years may renew the permit by submitting to DADS ~~[DHS]~~:

(A) - (D) (No change.)

(9) - (10) (No change.)

(m) Changes.

(1) A permit holder must notify DADS ~~[Notification of changes shall be reported to DHS]~~ within 30 calendar days after changing his or her ~~[a change of]~~ address or name.

(2) DADS ~~[DHS]~~ replaces a lost, damaged, or destroyed permit upon receipt of a completed duplicate permit request form and permit replacement fee.

(n) Fees.

(1) - (2) (No change.)

(3) An applicant or permit holder must pay the required fee by cashier's check or money order made payable to the Department of Aging and Disability Services. All fees are nonrefundable, except as provided by Government Code, Chapter 2005 [An applicant whose personal check for the combined permit application and examination fee is not honored by the financial institution may reinstate the application by remitting to DHS a money order or cashier's check for the amount within 30 calendar days of the date of the applicant's receipt of DHS's notice. An application will be considered incomplete until the fee has been received and cleared through the appropriate financial institution].

~~[(4) A permit holder whose personal check for the renewal fee is not honored by the financial institution must remit to DHS a money order or cashier's check within 30 calendar days of the date of the licensee's receipt of DHS's notice. If proper payment is not received, the permit will not be renewed. If a renewal card has already been issued, it will be void.]~~

(o) Training program requirements.

(1) An educational institution accredited by the Texas Workforce Commission ~~[Education Agency]~~ or Texas Higher Education Coordinating Board that desires to offer a training program must file an application for approval on a DADS ~~[an official]~~ form. Programs sponsored by state agencies for the training and preparation of its own employees are exempt from the accreditation requirement. An approved institution may offer the training program and a continuing education program.

(A) All signatures on DADS ~~[official]~~ forms and supporting documentation must be originals.

(B) The application includes:

(i) - (iv) (No change.)

(v) an outline of the program content and curriculum if the curriculum covers more than DADS' ~~[DHS's]~~ established curricula.

(C) DADS ~~[DHS]~~ may conduct an inspection of the classroom site.

(D) DADS ~~sends notice [Notice]~~ of approval or proposed disapproval of the application ~~[will be given]~~ to the program within 30 calendar days of the receipt of a complete application. If the application is proposed to be disapproved due to noncompliance with the requirements of the Health and Safety Code, Chapter 142, Subchapter B, ~~[statute]~~ or of this chapter, the reasons for disapproval are ~~[must be]~~ given in the notice.

(E) (No change.)

(2) (No change.)

(3) The program consists of 140 hours in the following order: 100 hours of classroom instruction and training, 20 hours of return skills demonstration laboratory, ten hours of clinical experience including clinical observation and skills demonstration under the supervision of a RN in an agency, and ten more hours in the return skills demonstration laboratory ~~[in the preceding order]~~. A classroom or laboratory hour is ~~[constitutes]~~ 50 clock-minutes of actual classroom or laboratory time.

(A) - (B) (No change.)

(C) Each program must follow the curricula established by DADS ~~[DHS]~~.

(4) At least seven calendar days prior to the commencement of each program, the coordinator must notify DADS ~~[DHS]~~ in writing of the starting date, the ending date, the daily hours of the program, and the projected number of students.

(5) A change in any information presented by the program in an approved application including, but not limited to, location, instructorship, and content must be approved by DADS ~~[DHS]~~ prior to the program's effective date of the change.

(6) - (8) (No change.)

(9) Within 15 calendar days after completion of the course, each ~~[Each]~~ program must inform DADS ~~on the DADS class roster form~~ ~~[DHS]~~ of the satisfactory completion for each student ~~[within 15]~~



calendar days of completion of the course. The official department class roster form must be used and signed by the coordinator].

(p) Continuing education. The continuing education training program is as follows.

(1) - (2) (No change.)

(3) Each program must follow the curricula established by DADS [DHS].

(4) Within 15 days after completion of the course, each [Each] program must inform DADS on the DADS class roster form [DHS] of the name of each permit holder who has completed [completes] the course [within 15 calendar days. The official department class roster form must be used and signed by the coordinator].

(q) Processing procedures. DADS [DHS] complies with the following procedures in processing applications of home health medication aide permits and renewal of permits.

(1) - (3) (No change.)

(4) Good cause for exceeding the time period exists [is considered to exist] if the number of applications for initial home health medication aide permits and renewal permits exceeds by 15% or more the number of applications processed in the same calendar quarter of the preceding year; another public or private entity relied upon by DADS [DHS] in the application process caused the delay; or any other condition exists giving DADS [DHS] good cause for exceeding the time period.

(5) If a request for reimbursement under paragraph (3) of this subsection is denied by the director of the Home Health Medication Aide Permit Program, the applicant may appeal to the commissioner of DADS [DHS] for a timely resolution of any dispute arising from a violation of the time periods. The applicant must give written notice to the commissioner at the address of DADS [DHS] that he or she requests full reimbursement of all fees paid because his or her application was not processed within the applicable time period. The director of the Home Health Medication Aide Permit Program must submit a written report of the facts related to the processing of the application and of any good cause for exceeding the applicable time period. The commissioner provides written notice of the commissioner's decision to the applicant and the director of the Home Health Medication Aide Permit Program. An appeal is decided in the applicant's favor if the applicable time period was exceeded and good cause was not established. If the appeal is decided in favor of the applicant, full reimbursement of all fees paid in that particular application process are made.

[(6) The time periods for contested cases related to the denial of initial home health medication aide permits or renewal permits are not included within the time periods stated in this subsection. The time period for conducting a contested case hearing runs from the date DHS receives a written request for a hearing and ends when the decision of DHS is final and appealable. A hearing may be completed within one to four months but may extend for a longer period of time depending on the particular circumstances of the hearing.]

(r) Denial, suspension, or revocation.

(1) DADS [DHS] may deny, suspend, emergency suspend, or revoke a permit or program approval if the permit holder or program fails to comply with any provision of the Health and Safety Code, Chapter 142, Subchapter B, [statute] or this chapter.

(2) DADS [DHS] may also take action under paragraph (1) of this subsection for fraud, misrepresentation, or concealment of material fact on any documents required to be submitted to DADS [DHS]

or required to be maintained or complied by the permit holder or program pursuant to this chapter.

(3) DADS [DHS] may suspend or revoke an existing permit or program approval or disqualify a person from receiving a permit or program approval because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of a home health medication aide or training program. In determining whether a conviction directly relates, DADS considers [DHS must consider] the elements set forth in §97.601 [§97.52(e)] of this title (relating to License Denial, Suspension or Revocation [Enforcement Action]).

(4) If DADS [DHS] proposes to deny, suspend, or revoke a home health medication aide permit or to rescind a home health medication aide program approval, DADS [the director] notifies the permit holder or home health medication aide program by certified mail, return receipt requested, of the reasons for the proposed action and offers [offer] the permit holder or home health medication aide program an opportunity for a hearing.

(A) The permit holder or home health medication aide program must request a hearing within 15 calendar days of receipt of the notice. Receipt of notice is presumed to occur on the tenth calendar day after the notice is mailed to the last address known to DADS [DHS] unless another date is reflected on a United States Postal Service return receipt.

(B) The request must be in writing and submitted to the [Texas] Department of Aging and Disability [Human] Services, Medication Aide Permit Program, Mail Code Y-979 [979], P.O. Box 149030, Austin, Texas 78714-9030.

(C) (No change.)

(5) DADS [DHS] may suspend a permit to be effective immediately when the health and safety of persons are threatened. DADS [DHS] notifies the permit holder of the emergency action by certified mail, return receipt requested, or personal delivery of the notice and of the effective date of the suspension and the opportunity for the permit holder to request a hearing.

(6) All hearings are [must be] conducted pursuant to [the Administrative Procedure Act,] Texas Government Code, Chapter 2001, and the [DHS's] formal hearing procedures at 1 TAC §§357.481 - 357.490 [in Chapter 79 of this title (relating to Legal Services)].

(7) (No change.)

(8) If DADS [DHS] suspends a home health medication aide permit, the suspension remains in effect until DADS [DHS] determines that the reason for suspension no longer exists, revokes the permit, or determines not to renew the permit. DADS [DHS] investigates prior to making a determination.

(A) During the time of suspension, the suspended permit holder must return his or her permit to DADS [DHS].

(B) If a suspension overlaps a renewal date, the suspended permit holder may comply with the renewal procedures in this chapter; however, DADS does [DHS may] not renew the permit until DADS [DHS] determines that the reason for suspension no longer exists.

(9) If DADS [DHS] revokes or does not renew a permit, a person may reapply for a permit by complying with the requirements and procedures in this chapter at the time of application.

(A) DADS [DHS] may refuse to issue a permit if the reason for revocation or nonrenewal continues to exist.

(B) When a permit is revoked or not renewed [Upon revocation or nonrenewal], a permit holder must immediately return the license or permit to DADS [DHS].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 4, 2005.

TRD-200501410

Phoebe Knauer

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: May 15, 2005

For further information, please call: (512) 438-3734



## PART 20. TEXAS WORKFORCE COMMISSION

### CHAPTER 802. TEXAS WORKFORCE COMMISSION LOCAL WORKFORCE DEVELOPMENT BOARD ADVISORY COMMITTEE

The Texas Workforce Commission (Commission) proposes new Chapter 802, relating to the Texas Workforce Commission Local Workforce Development Board Advisory Committee (TWC Advisory Committee), comprising the following subchapters:

Subchapter A. General Provisions

Subchapter B. Requirements for TWC Advisory Committee Members

Subchapter C. Requirements for TWC Advisory Committee Meetings

Subchapter D. Reporting to the Commission

Subchapter E. Agency Evaluation of the TWC Advisory Committee and Report to the Legislative Budget Board

PART I. PURPOSE AND BACKGROUND

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART III. IMPACT STATEMENTS

PART IV. COORDINATION ACTIVITIES

PART V. PROPOSED RULES

PART I. PURPOSE AND BACKGROUND

Purpose

Senate Bill 280 (SB 280), enacted by the 78th Texas Legislature, Regular Session, (2003), added §302.013 to the Texas Labor Code. This new provision requires the creation of a Local Workforce Development Board (Board) advisory committee at the Texas Workforce Commission to "advise the commission and commission staff regarding the programs, policies, and rules of the commission that affect the operations of local workforce development boards and the local workforce delivery system."

Background

Texas Government Code, Chapter 2110 governs state agency advisory committees that are either created by state or federal law or established by a state agency pursuant to state or federal law. Chapter 2110 requires a state agency that establishes an advisory committee to develop rules that state the purpose and tasks of the advisory committee and describe the manner in which the advisory committee will report to the agency. Moreover, it permits the agency to designate the date on which the advisory committee will automatically be abolished unless the agency by rule establishes a different date.

Additionally, Chapter 2110 establishes minimum requirements for state agency advisory committees regarding the composition of the advisory committee, the selection of a presiding officer, the reimbursement of members' expenses, the agency evaluation of the advisory committee's cost and effectiveness, and the state agency report to the Legislative Budget Board regarding the effectiveness of the advisory committee.

The Commission proposes adoption of a new Chapter 802 to its rules to incorporate the requirements of Texas Labor Code, §302.013 and Texas Government Code, Chapter 2110.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

SUBCHAPTER A. GENERAL PROVISIONS

§802.1. Requirements for the Texas Workforce Commission Local Workforce Development Board Advisory Committee

Proposed §802.1 describes the statutory authority for the establishment of the TWC Advisory Committee. The TWC Advisory Committee shall be governed by Chapter 802 and is established under Texas Labor Code, §302.013 and is subject to Texas Government Code, Chapter 2110.

§802.2. Purpose and Tasks

The Commission proposes in §802.2(a) that the purpose of the TWC Advisory Committee will be to serve as the Commission's primary point of contact for Board chairs, Board members, and Board executive directors for the discussion of policy issues that affect the operations of Boards and the local workforce delivery system that may serve as a basis for rulemaking and policy development by the Commission.

Even though the TWC Advisory Committee will be the primary entity for discussion of policy affecting Board operations and the workforce delivery system, the Commission will continue to welcome and encourage input from Board chairs, Board members, Board executive directors, and the public.

Texas Government Code, §2110.005(1) requires state agencies to provide by rule the purpose and tasks of an advisory committee. The Commission proposes that the required tasks of the TWC Advisory Committee mirror the tasks stipulated in Texas Labor Code, §302.013(e)(3). Therefore, §802.2(b) states that the TWC Advisory Committee shall meet at least quarterly; report to the Commission at least annually; and advise the Commission and Commission staff regarding the programs, policies, and rules of the Commission that affect the operations of Boards and the local workforce delivery system.

Further, the Commission proposes in §802.2(c) the tasks that the TWC Advisory Committee may perform, which include providing a statewide perspective of the workforce system to the Commission; advising the Commission on policy or rule concept papers;

recommending to the Commission items for improving the operations of the local workforce delivery system; and requesting information from the Commission regarding existing rules, policies, or other topics the TWC Advisory Committee wants to study.

#### §802.3. Duration of the TWC Advisory Committee

Texas Government Code, §2110.008(a) provides that a state agency may designate the date on which its advisory committee will automatically be abolished. The advisory committee may continue in existence after the abolishment date if the state agency amends its rule to establish a different date. For advisory committees established by law, the date of creation is the effective date of the law. In the case of the TWC Advisory Committee, the effective date of the law (SB 280) was September 1, 2003. Therefore, unless the Commission establishes a different date, the automatic abolishment date of the TWC Advisory Committee is September 1, 2007.

The Commission proposes in §802.3 that the TWC Advisory Committee be abolished on September 1, 2007, unless the Commission by rule determines a different abolishment date.

#### §802.4. Agency Contact

To facilitate effective and efficient communication, the Commission proposes to designate in §802.4 the Agency's executive director as the single point of contact for the TWC Advisory Committee.

### SUBCHAPTER B. REQUIREMENTS FOR TWC ADVISORY COMMITTEE MEMBERS

#### §802.11. Appointment and Composition

Texas Labor Code, §302.013(b) provides that the executive officers of "the organization composed of a member of and the staff director of each local workforce development board" appoint the TWC Advisory Committee members. The statute does not specifically identify the organization whose executive officers are required, pursuant to §302.013(b), to appoint the TWC Advisory Committee members.

The Commission reviewed the legislative history of SB 280, including legislative bill analyses and committee meeting hearings and notes. No version of the bill specified the name of the organization. However, every version of the bill analysis—from the introduced version to the enrolled version—stated that the bill "requires the executive committee of the Workforce Leadership of Texas (WLT) to appoint the committee members, consisting of nine representatives from WLT."

Additionally, the Commission reviewed the testimony at the April 9, 2003, Senate Government Organization Committee hearing on SB 280. At the hearing, a member of WLT (now named the Texas Association of Workforce Boards or TAWB) testified that it is in a position to appoint the members of the TWC Advisory Committee. Therefore, the Commission proposes that §802.11(a) of this subchapter specifically designate the Executive Committee of TAWB, or its successor organization, as the entity to appoint TWC Advisory Committee members. Section 802.11(a) further requires that the Executive Committee of TAWB, or its successor organization, provide due notice of the meeting at which appointments to the TWC Advisory Committee will be made to the Agency executive director in time for the Agency to provide a seven-day public notice of the meeting.

Texas Labor Code, §302.013 requires that the TWC Advisory Committee be composed of six Board members and three Board

executive directors. The Commission proposes to mirror this requirement in §802.11(b). To align with the principle in Texas Government Code, §2308.256(a) that Boards shall have a majority of their members represent the private sector, the Commission proposes a requirement in §802.11(b) that the six Board members be private sector employers.

Further, Texas Labor Code, §302.013(b) provides that members of the TWC Advisory Committee shall represent different geographic areas of the state. The Commission proposes to mirror this requirement in §802.11(c).

The Commission also proposes §802.11(d) to prohibit a member of the TAWB Executive Committee, or its successor organization, from serving as a member of the TWC Advisory Committee. Texas Labor Code, §302.013(b) provides that the organization representing Boards appoint the TWC Advisory Committee. The statute reflects the premise that the TWC Advisory Committee should present a variety of ideas and membership. Consequently, the Commission finds that those members of the Executive Committee of TAWB appointing the TWC Advisory Committee should not also serve on the TWC Advisory Committee. Drawing from differing geographic regions and different TAWB membership for the TWC Advisory Committee offers the best opportunity for diverse voices and ideas to reach the Commission for consideration. Having greater a number of participants from the Boards offering recommendations is in the best interest of the workforce system as a whole. It is the Commission's desire that the TWC Advisory Committee will bring consensus recommendations and innovative ideas for improvements to the workforce system. One way to achieve that goal is to have a variety of members presenting information to the Commission.

The Commission also takes notice of a longstanding common-law doctrine generally prohibiting public self-appointment (*Ehlinger v. Clark*, 8 S.W.2d 666, 674 (Tex. 1928)). While this doctrine is not directly applicable, the Commission finds its premise useful. As generally stated by the Texas Supreme Court, this doctrine holds that a member of a body making an appointment should not also serve as a member of the appointed body (Tex. Att'y Gen. Op. LO-93-070 at 3 (1993)). Because the TAWB Executive Committee has the power of appointment, the Commission believes that members of the TAWB Executive Committee should not also appoint themselves to the TWC Advisory Committee.

#### §802.12. Vacancies

In §802.12(a), the Commission proposes that if a vacancy occurs, the TAWB Executive Committee, or its successor organization, shall have 90 days following the date on which the vacancy occurred to appoint a person to serve the unexpired portion of that term. Section 802.12(a) further requires that the TAWB Executive Committee, or its successor organization, provide due notice of meetings at which vacancies on the TWC Advisory Committee will be filled to the Agency executive director in time for the Agency to provide a seven-day public notice of the meeting.

Additionally, proposed §802.12(b) states that a vacancy shall occur if, during the member's term, the TWC Advisory Committee member is no longer a Board member or an executive director for the Board represented when the person was initially appointed to the TWC Advisory Committee. The Commission proposes this provision in order to maintain the geographical representation as required by Texas Labor Code, §302.13(b) and provided in proposed §802.11(c). For example, the geographical representation of the TWC Advisory Committee membership

could change should an executive director of a Board located in one area of the state be appointed to the TWC Advisory Committee and during the member's term resigns as that Board's executive director to become the executive director of a Board in a different area of the state. In order to avoid this situation, proposed §802.12(b) would require the executive director to resign from the TWC Advisory Committee and the TAWB Executive Committee would have 90 days to fill the vacancy. When appointing new members to fill vacancies, the TAWB Executive Committee must adhere to the geographical requirements in §802.11(c).

#### §802.13. Terms of Office

The Commission proposes in §802.13(a) that the term of a TWC Advisory Committee member shall be two years. Because, it is important to have experienced TWC Advisory Committee members as well as to allow for new perspective through rotation of membership, §802.13(b) provides that a member may serve multiple terms, but shall serve no more than two consecutive terms. The ability to have TWC Advisory members serve multiple terms allows for experienced members to continue to participate on the TWC Advisory Committee. However, the provision also requires a break in membership after two consecutive terms, to afford new and fresh perspectives on the TWC Advisory Committee.

The Commission proposes that TWC Advisory Committee members serve staggered terms. It is important that the terms of office allow for new TWC Advisory Committee members to serve along with experienced members. It is also important not to have all terms expire at the same time, which would require the entire TWC Advisory Committee to reconstitute every two years. Section 802.13(c) provides that in order to establish the staggered terms, TAWB shall initially appoint three Board members and one executive director for a one-year term and three Board members and two executive directors for a two-year term. Following the expiration of the initial four members' one-year term, TAWB or its successor organization shall appoint four members to two-year terms. Subsequent appointments for all members shall be for two-year terms. In this manner, TWC Advisory Committee members' terms will expire every year. Four terms will expire in one year, then five terms will expire the next year. The four members appointed for a one-year term will fulfill a one-time, one-year appointment that will occur during the first year the TWC Advisory Committee is in existence.

#### §802.14. Selection and Role of a Presiding Officer

Texas Government Code, §2110.003 states that an advisory committee shall select from among its members a presiding officer to preside over the advisory committee. The Commission proposes to mirror this language in §802.14, which states that the TWC Advisory Committee shall elect a presiding officer from among its members. The Commission proposes that the presiding officer be a Board member in order to emphasize the importance of the private sector perspective in the work of the TWC Advisory Committee. The Commission also proposes that the presiding officer be designated to report to the Commission, as required in §2110.003(b) of the Texas Government Code.

#### §802.15. Legislative Activity

The provisions of Texas Government Code, Chapter 556 regarding the use of state appropriations for political activities apply to officers and employees of Boards. By extension, the TWC Advisory Committee members are also covered by Chapter 556. Therefore, the Commission proposes to include in §802.15(a)

that TWC Advisory Committee members are subject to the lobbying provisions of Texas Government Code, Chapter 556. Individual members are not restricted from representing themselves, their Boards, their businesses, or any other entities to the Texas Legislature, subject to state law restrictions on lobbying.

### SUBCHAPTER C. REQUIREMENTS FOR TWC ADVISORY COMMITTEE MEETINGS

#### §802.21. Open Meetings

The TWC Advisory Committee is not a "governmental body" as defined in the Open Meetings Act in Texas Government Code, Chapter 551. However, research on various Texas state agencies' advisory committees shows that several state agencies, such as the Texas Department of State Health Services, require their advisory committees to conduct meetings in accordance with the Texas Open Meetings Act.

Therefore, in order to promote public participation, the Commission proposes in §802.21(a) that meetings of the TWC Advisory Committee be conducted in accordance with the Open Meetings Act requirements in Texas Government Code, Chapter 551. Subsection 802.21(b) proposes that the Agency's executive director, as the central point of contact for the TWC Advisory Committee, shall be responsible for posting the meetings, in accordance with §551.044 of the Texas Government Code, which requires a seven-day posting for meetings with statewide jurisdiction. The Commission anticipates and expects that the TWC Advisory Committee will notify the Agency's executive director about its meetings and agendas in a timely manner so that statewide Open Meetings Act requirements are met. Subsection 802.21(c) proposes that the Agency's executive director also be responsible for preparing and keeping the meeting minutes, as set forth in Chapter 551, Subchapter B of the Texas Government Code. This subchapter requires that minutes or a tape recording of each open meeting be kept and available to the public upon request. To implement this requirement, the Agency will record each meeting and transcribe the minutes of the TWC Advisory Committee to serve as the approved minutes, and will maintain a file of all meeting minutes.

Additionally, the Commission proposes in §802.21(d) that a quorum shall be present for TWC Advisory Committee meetings. In keeping with the requirements of the Open Meetings Act in the Texas Government Code, §551.001(6), a quorum is defined as six members of the TWC Advisory Committee. In order to conduct business, a quorum must be present. In §802.21(e), the Commission proposes that the approval of five members of the TWC Advisory Committee be required on any advice, recommendations, or reports. The Commission proposes these two provisions in order to emphasize the importance of soliciting input and achieving consensus from a majority of the members of the TWC Advisory Committee.

#### §802.22. Open Records

The TWC Advisory Committee is not a "governmental body" for purposes of the Open Meetings Act; however, the TWC Advisory Committee does meet the definition of a governmental body in §552.003 of the Public Information Act. Therefore, the Commission proposes in §802.22(a) that TWC Advisory Committee records be subject to the Public Information Act, Texas Government Code, Chapter 552. In order to implement the requirements of the Public Information Act, the Commission proposes in §802.22(b) that the Agency's executive director be responsible for responding to requests for information filed under the Public Information Act, Texas Government Code, Chapter 552.

## SUBCHAPTER D. REPORTING TO THE COMMISSION

### §802.31. Annual Report

Texas Government Code, §2110.005(2) requires state agencies with advisory committees to adopt rules that "describe the manner in which the committee will report to the agency." Texas Labor Code, §302.013(e)(2) states that the TWC Advisory Committee shall "report to the commission at least annually."

In §802.31(a), the Commission proposes that the presiding officer of the TWC Advisory Committee submit an annual report to the Commission on or before July 1 of each year in order for the Agency to complete its annual evaluation of the TWC Advisory Committee, as required by Texas Government Code, §2110.006, by the end of a fiscal year. The Commission proposes in §802.31(b) that the annual report shall delineate the TWC Advisory Committee's activities over the previous 12 months, specifically from June 1 of the previous year to May 31, and include, at a minimum:

- (1) a description of how the TWC Advisory Committee has accomplished its purpose and tasks;
- (2) a brief description of advice, recommendations, and reports made by the TWC Advisory Committee;
- (3) the costs related to the TWC Advisory Committee's existence and the source of funds used to support its activities;
- (4) a list of the meeting dates, including subcommittee meetings;
- (5) the attendance records of its members; and
- (6) the TWC Advisory Committee bylaws.

## SUBCHAPTER E. AGENCY EVALUATION OF THE TWC ADVISORY COMMITTEE AND REPORT TO THE LEGISLATIVE BUDGET BOARD

### §802.41. Agency Annual Evaluation

Texas Government Code, §2110.006 provides that a state agency that has established an advisory committee shall evaluate annually the advisory committee's work and usefulness, and the costs related to the advisory committee's existence, including the cost of agency staff time spent in support of the committee's activities. The Commission proposes to mirror this language in §802.41.

### §802.42. Commission Report to the Legislative Budget Board

Texas Government Code, §2110.007 requires that the Commission report to the Legislative Budget Board the information developed in the evaluation required by §2110.006 and file the report biennially in connection with the Commission's request for appropriations. The Commission proposes language in §802.42 to fulfill this requirement.

## PART III. IMPACT STATEMENTS

Randy Townsend, Chief Financial Officer of the Texas Workforce Commission, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules.

There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

Mr. Townsend has also determined that there is no anticipated adverse impact on small businesses or microbusinesses as a result of enforcing or administering the rules because the proposed rules do not add new regulatory requirements or change existing regulatory requirements on small businesses or microbusinesses.

Mark Hughes, Director of Labor Market Information of the Texas Workforce Commission, has determined that there is no significant negative impact on employment conditions in this state as a result of the proposed rules. Mr. Hughes does not expect any significant impact on overall employment conditions in the state as a result of the proposed rules.

Luis M. Macias, Director of Workforce Development Division of the Texas Workforce Commission, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to facilitate Board input and provide a statewide perspective on policies of the Texas Workforce Commission that affect the operations of Boards and the local workforce development system.

Mr. Macias has also determined that for each year of the first five years the rules are in effect, there will be no economic cost to persons required to comply with these rules as a result of enforcing the proposed rules.

## PART IV. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, the Commission sought the involvement of Texas' twenty-eight Boards and the Texas Association of Workforce Boards. The Commission provided a policy concept paper to the Boards for consideration and review pursuant to Texas Labor Code, §302.064 and the Commission's Resolution Regarding Board Coordination in Policy Development, which was adopted on September 24, 2002. During the development of these proposed rules, the Commission considered the information gathered in order to develop rules that provide clear and concise direction to the parties involved.

Comments on the proposed rules may be submitted to TWC Policy Comments, Policy and Development, 101 East 15th Street, Room 440T, Austin, Texas 78778; fax 512-475-3577; or e-mailed to [TWCPolicyComments@twc.state.tx.us](mailto:TWCPolicyComments@twc.state.tx.us). The Commission must receive comments no later than 30 days from the date this proposal is published in the *Texas Register*.

## SUBCHAPTER A. GENERAL PROVISIONS

### 40 TAC §§802.1 - 802.4

These rules are proposed pursuant to Texas Labor Code, §301.0015 and §302.002(d), which provide the Commission with the authority to adopt rules necessary to administer the Commission's policies in compliance with Texas Government Code, Chapter 2001; Texas Labor Code, §302.013, which provides specific authority regarding establishment of an advisory committee to the Commission; and Texas Government Code, Chapter 2110, relating to state agency advisory committees.

The proposed rules will affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Labor Code, §302.013 and Texas Government Code, Chapter 2110.

## PART V. PROPOSED RULES

### §802.1. Requirements for the Texas Workforce Commission Local Workforce Development Board Advisory Committee.

(a) The Texas Workforce Commission Local Workforce Development Board Advisory Committee (TWC Advisory Committee) shall be appointed pursuant to and governed by this chapter.

(b) The TWC Advisory Committee is established under Texas Labor Code, §302.013 and is subject to Texas Government Code, Chapter 2110.

### §802.2. Purpose and Tasks.

(a) The purpose of the TWC Advisory Committee is to serve as the Commission's primary point of contact for Local Workforce Development Board (Board) chairs, Board members, and Board executive directors in the discussion of policy issues affecting the operations of Boards and the local workforce delivery system that may serve as a basis for rulemaking and policy development by the Commission.

(b) The TWC Advisory Committee shall:

- (1) meet at least quarterly;
- (2) report to the Commission at least annually; and

(3) advise the Commission and Commission staff regarding the programs, policies, and rules of the Commission that affect the operations of Boards and the local workforce delivery system.

(c) The TWC Advisory Committee may:

(1) provide a statewide perspective of the workforce system;

(2) advise the Commission on policy or rule concept papers that affect the operations of Boards and the local workforce delivery system;

(3) make recommendations to the Commission to improve the operations of Boards and the local workforce delivery system; and

(4) request information from the Commission regarding existing rules or policies, or other topics the TWC Advisory Committee wants to study.

### §802.3. Duration of the TWC Advisory Committee.

The TWC Advisory Committee shall be abolished on September 1, 2007, unless the Commission by rule determines a different abolishment date.

### §802.4. Agency Contact.

The Agency's executive director shall serve as the single point of contact for the TWC Advisory Committee.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 30, 2005.

TRD-200501361

Donna Garrett

Deputy Director for Policy and Development

Texas Workforce Commission

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For further information, please call: (512) 475-0829

## SUBCHAPTER B. REQUIREMENTS FOR TWC ADVISORY COMMITTEE MEMBERS

### 40 TAC §§802.11 - 802.15

These rules are proposed pursuant to Texas Labor Code, §301.0015 and §302.002(d), which provide the Commission with the authority to adopt rules necessary to administer the Commission's policies in compliance with Texas Government Code, Chapter 2001; Texas Labor Code, §302.013, which provides specific authority regarding establishment of an advisory committee to the Commission; and Texas Government Code, Chapter 2110, relating to state agency advisory committees.

The proposed rules will affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Labor Code, §302.013 and Texas Government Code, Chapter 2110.

### §802.11. Appointment and Composition.

(a) The executive committee of the Texas Association of Workforce Boards (TAWB), or its successor organization, shall appoint members of the TWC Advisory Committee in a meeting for which notice is given to the Agency's executive director in time for a seven-day public meeting notification.

(b) The TWC Advisory Committee shall be composed of:

(1) six Board members who are private sector employers that serve as members of the organization described in subsection (a) of this section; and

(2) three Board executive directors who serve as members of the organization described in subsection (a) of this section.

(c) The TWC Advisory Committee members shall represent different geographic areas of the state.

(d) A member of the executive committee of the organization described in subsection (a) of this section shall not serve as a member of the TWC Advisory Committee.

### §802.12. Vacancies.

(a) In 90 days or less following the date on which a vacancy occurs, the executive committee of the organization, as described in §802.11(a) of this subchapter, shall, in a meeting for which notice is given to the Agency's executive director in time for a seven-day public meeting notification, appoint a person to serve the unexpired portion of that member's term.

(b) A vacancy shall occur if during the member's term, the TWC Advisory Committee member is no longer a Board member of or an executive director for the Board represented when the person was initially appointed to the TWC Advisory Committee.

### §802.13. Terms of Office.

(a) Notwithstanding the provisions in subsection (c) of this section, a term of a TWC Advisory Committee member shall be two years.

(b) A member may serve multiple terms, but shall serve no more than two consecutive terms.

(c) TWC Advisory Committee members shall serve staggered terms. In order to establish the staggered terms, the executive committee of the organization, as described in §802.11(a) of this subchapter, shall initially appoint three Board members and one executive director for a one-year term and three Board members and two executive directors for a two-year term. Following the expiration of the initial four

members' one-year term, the organization shall appoint four members to two-year terms. Subsequent appointments for all members shall be for two-year terms.

§802.14. Selection and Role of a Presiding Officer.

The TWC Advisory Committee shall elect a presiding officer who is a Board member and shall preside over the TWC Advisory Committee and report to the Commission.

§802.15. Legislative Activity.

(a) The TWC Advisory Committee and its members are subject to the lobbying provisions in Texas Government Code, Chapter 556.

(b) Individual TWC Advisory Committee members are not restricted from representing themselves, their Boards, their businesses, or any other entities to the Texas Legislature.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 30, 2005.

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Donna Garrett

Deputy Director for Policy and Development

Texas Workforce Commission

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For further information, please call: (512) 475-0829



## SUBCHAPTER C. REQUIREMENTS FOR TWC ADVISORY COMMITTEE MEETINGS

### 40 TAC §802.21, §802.22

These rules are proposed pursuant to Texas Labor Code, §301.0015 and §302.002(d), which provide the Commission with the authority to adopt rules necessary to administer the Commission's policies in compliance with Texas Government Code, Chapter 2001; Texas Labor Code, §302.013, which provides specific authority regarding establishment of an advisory committee to the Commission; and Texas Government Code, Chapter 2110, relating to state agency advisory committees.

The proposed rules will affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Labor Code, §302.013 and Texas Government Code, Chapter 2110.

§802.21. Open Meetings.

(a) TWC Advisory Committee meetings shall be conducted in accordance with open meetings requirements pursuant to Texas Government Code, Chapter 551.

(b) The responsibility for posting the meetings pursuant to the open meetings requirements of Texas Government Code, §551.044, will be carried out by the Agency's executive director.

(c) The responsibility for preparing and keeping the minutes pursuant to the open meetings requirements of Texas Government Code, Chapter 551, Subchapter B, will be carried out by the Agency's executive director.

(d) Six members of the TWC Advisory Committee shall be present to constitute a quorum for the purpose of conducting business.

(e) Any advice, recommendations, or reports made by the TWC Advisory Committee must be approved by five members of the TWC Advisory Committee.

§802.22. Open Records.

(a) TWC Advisory Committee records are subject to the Public Information Act, Texas Government Code, Chapter 552.

(b) The responsibility for responding to requests for information under the Public Information Act, Texas Government Code, Chapter 552, will be carried out by the Agency's executive director.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Donna Garrett

Deputy Director for Policy and Development

Texas Workforce Commission

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For further information, please call: (512) 475-0829



## SUBCHAPTER D. REPORTING TO THE COMMISSION

### 40 TAC §802.31

These rules are proposed pursuant to Texas Labor Code, §301.0015 and §302.002(d), which provide the Commission with the authority to adopt rules necessary to administer the Commission's policies in compliance with Texas Government Code, Chapter 2001; Texas Labor Code, §302.013, which provides specific authority regarding establishment of an advisory committee to the Commission; and Texas Government Code, Chapter 2110, relating to state agency advisory committees.

The proposed rules will affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Labor Code, §302.013 and Texas Government Code, Chapter 2110.

§802.31. Annual Report.

(a) The TWC Advisory Committee presiding officer shall submit an annual report to the Commission on or before July 1 of each year.

(b) The annual report shall describe the activities of the TWC Advisory Committee from June 1 of the previous year to May 31 of the reporting year and include, at a minimum:

(1) a description of how the TWC Advisory Committee has accomplished its purpose and tasks;

(2) a brief description of advice, recommendations, and reports made by the TWC Advisory Committee;

(3) the costs related to the TWC Advisory Committee's existence and the source of funds used to support its activities;

(4) a list of the meeting dates, including subcommittee meetings;

(5) the attendance records of its members; and

(6) the TWC Advisory Committee bylaws.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 30, 2005.

TRD-200501364

Donna Garrett

Deputy Director for Policy and Development

Texas Workforce Commission

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For further information, please call: (512) 475-0829

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## SUBCHAPTER E. AGENCY EVALUATION OF THE TWC ADVISORY COMMITTEE AND REPORT TO THE LEGISLATIVE BUDGET BOARD

### 40 TAC §802.41, §802.42

These rules are proposed pursuant to Texas Labor Code, §301.0015 and §302.002(d), which provide the Commission with the authority to adopt rules necessary to administer the Commission's policies in compliance with Texas Government Code, Chapter 2001; Texas Labor Code, §302.013, which provides specific authority regarding establishment of an advisory committee to the Commission; and Texas Government Code, Chapter 2110, relating to state agency advisory committees.

The proposed rules will affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Labor Code, §302.013 and Texas Government Code, Chapter 2110.

#### §802.41. Agency Annual Evaluation.

The Agency shall evaluate annually:

- (1) the TWC Advisory Committee's work;
- (2) the TWC Advisory Committee's usefulness; and
- (3) the costs related to the TWC Advisory Committee's existence, including the cost of Agency staff time spent in support of the TWC Advisory Committee's activities.

#### §802.42. Commission Report to the Legislative Budget Board.

(a) The Commission shall report the information developed in the evaluation required in §802.41 of this subchapter to the Legislative Budget Board.

(b) The Commission shall file the Legislative Budget Board report, described in subsection (a) of this section, biennially in connection with the Commission's request for appropriations.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Donna Garrett

Deputy Director for Policy and Development

Texas Workforce Commission

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For further information, please call: (512) 475-0829

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## TITLE 43. TRANSPORTATION

## PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

### CHAPTER 31. PUBLIC TRANSPORTATION

The Texas Department of Transportation (department) proposes amendments to §31.11, concerning state formula program and §31.36, concerning the Section 5311 grant program for public transportation.

#### EXPLANATION OF PROPOSED AMENDMENTS

Transportation Code, §456.022 authorized the Texas Transportation Commission (commission) to adopt rules to establish a formula that may take into account a transportation provider's performance, the number of its riders, the need of residents in its service area for public transportation, population, population density, land area, and other factors established by the commission.

On June 24, 2004, the commission amended §31.11 and §31.36 to establish formulas for the distribution of state and federal funds. The commission now desires to further define the formulas to better allocate funding resources.

The Public Transportation Advisory Committee (PTAC) met several times to discuss the changes to the existing formulas and rules. PTAC provides a forum for the exchange of information between the department, the commission, and committee members.

Four PTAC committee members represent a diverse cross-section of public transportation providers; three members represent a diverse cross-section of public transportation users; and two members represent the general public. Advice and recommendations expressed by the committee provide the department and the commission with a broader perspective regarding public transportation matters that will be considered in formulating department policies.

PTAC's duties include advising the commission on the needs and problems of the state's public transportation providers, including recommending methods for allocating state public transportation funds, and commenting on proposed rules or rule changes involving public transportation matters during their development and prior to final adoption. PTAC recommended that state funds be allocated between urban and non-urbanized areas with 35% of the funding allocated to the urban areas of the state and 65% of the funding allocated to the non-urbanized areas of the state. PTAC also recommended that any further distribution of state funds allocated to urban areas be based on population not to exceed 199,999, in both the 80%, which is allocated based on population, and the 20%, which is allocated based on system performance. In addition, PTAC recommended new state funds performance criteria for the urban areas to be based on local funds per operating expense, operating expense per mile (inverted), and ridership per capita. PTAC recommended for the urban areas that the state funds performance criterion of operating expenses per mile (inverted) be calculated comparing a transit agency against its previous performance. PTAC further recommended state funds performance criteria for the urban areas that local funds per operating expense and ridership per capita be compared system to system.

The rules presented include recommendations from PTAC as outlined above and also include the following changes to the state formula for urban areas and federal funds for Section 5311, non-urbanized areas: (1) Provisions of the phase-in process are



revised to use fiscal year 2004 as the base year when calculating allocations for the next allocation of funds, after which, succeeding allocations will be based on previous fiscal years; and (2) The limitation of the growth cap will be removed allowing systems to grow to their full formula allocation, subject to available funding, and should available funding exceed the full formula allocations, additional funding will be allocated to all systems on a pro rata basis with these additional awards not subject to the transition funding allocation process in succeeding fiscal years.

On March 15, 2005, PTAC met and, by unanimous vote of the members present, waived preliminary review and comment of the proposed rules until after the public comment period is initiated.

The amendments to §31.11, Formula Program, provide changes to the current formula. The funds will be allocated between small urban and non-urbanized areas with 35% of the funding allocated to the urban areas of the state and 65% of the funding allocated to the non-urbanized areas of the state. This percentage funding split more closely parallels historical distribution between urban and non-urbanized areas.

Urban areas that have populations of 200,000 or greater will be adjusted on a pro rata basis to reflect a population level of 199,999 for both the 80%, which is allocated based on population, and the 20%, which is allocated based on system performance. This adjustment of population more closely aligns systems with the population levels used at the federal level, which separate smaller urban systems from larger urban systems, and also more closely aligns with the population levels used in the definition of urban transit district defined in Transportation Code, Chapter 458.

Performance criteria for the urban areas are changed to local funds per operating expense, operating expense per mile (inverted), and ridership per capita. Operating expenses per mile (inverted) will be calculated comparing a transit agency against its previous performance. Local funds per operating expense and ridership per capita will be compared system to system. These revised performance criteria reflect standards that provide a more meaningful and accurate measurement and comparison.

The five-year phase-in process that went into effect in FY 2005 will continue for the next four fiscal year allocations. However, the provisions of the phase-in process are revised to use fiscal year 2004 as the base year when calculating allocations for the next allocation of funds, after which, succeeding allocations will be based on previous fiscal years. This will allow an entity time to plan before it will be affected by a significant change in funding. In addition, the limitation of 20% growth will be removed allowing systems to grow to their full formula allocation, subject to available funding. Should available funding exceed the full formula allocations, additional funding will be awarded by the commission on a pro rata basis, competitively, or a combination of both. Consideration for the award of these additional funds may include, but is not limited to, coordination and technical support activities, compensation for unforeseen funding anomalies, assistance with eliminating waste and ensuring efficiency, maximum coverage in the provision of public transportation services, and reductions in air pollution. These additional awards will allow the commission to address state priorities. These awards are not subject to the transition funding allocation process in succeeding fiscal years.

The amendments to §31.36, Section 5311 Grant Program, provide changes to the current formula. The five-year phase-in

process that went into effect in FY 2005 will continue for the next four fiscal year allocations. However, the provisions of the phase-in process are revised to use fiscal year 2004 as the base year when calculating allocations for the next allocation of funds, after which, succeeding allocations will be based on previous fiscal years. This will continue to guarantee that an entity will have time to plan before it will be affected by a significant reduction. In addition, the limitation of 20% growth will be removed allowing systems to grow to their full formula allocation, subject to available funding. Should available funding exceed the full formula allocations, additional funding will be awarded by the commission on a pro rata basis, competitively, or a combination of both. Consideration for the award of these additional funds may include, but is not limited to, coordination and technical support activities, compensation for unforeseen funding anomalies, assistance with eliminating waste and ensuring efficiency, maximum coverage in the provision of public transportation services, and reductions in air pollution. These additional awards will allow the commission to address state priorities. These awards are not subject to the transition funding allocation process in succeeding fiscal years.

#### FISCAL NOTE

James Bass, Director, Finance Division, has determined that for each of the first five years the amendments as proposed are in effect, there will be fiscal implications for state or local governments as a result of enforcing or administering the amendments. There will be anticipated economic costs for transit agencies required to comply with the sections as proposed due to some entities receiving a reduction in funds.

For urban systems that receive state funds, the maximum reduction for the first four fiscal years is 10% per fiscal year, and for the fifth year, the maximum reduction for urban systems is 11.41%. For the urban systems that receive state funds, the maximum growth for the first five years is 36.51%, 38.42%, 121.63%, 35.75%, and 12.44% respectively.

For non-urbanized systems that receive state funds, the maximum reduction for the first four fiscal years is 10% per fiscal year, and for the fifth year, the maximum reduction for non-urbanized systems is 41.00%. For the non-urbanized systems that receive state funds, the maximum growth for the first five years is 24.73%, 18.09%, 15.54%, 12.59%, and 101.57% respectively.

For non-urbanized systems that receive federal funds, the maximum reduction for the first four fiscal years is 10% per fiscal year, and for the fifth year, the maximum reduction for non-urbanized systems is 39.22%. For the non-urbanized systems that receive federal funds, the maximum growth for the first five years is 33.73%, 19.70%, 12.86%, 18.09%, and 86.51% respectively.

Since the future performance of individual transit systems cannot be predicted, the basis of calculation was held constant. Individual systems performing at a level better than their current level may realize a higher percentage funding level. Funding levels were applied based on the department's request for legislative appropriation and the fiscal year 2005 federal apportionment. However, future appropriations and apportionments cannot be predicted. Therefore, commission awards also cannot be predicted should additional funding be available.

Susan N. Bryant, Director, Public Transportation Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

## PUBLIC BENEFIT

Ms. Bryant has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be a fair and equitable distribution of public transportation funds that will encourage transportation providers to be efficient and economical. There will be no adverse economic effect on small businesses.

## PUBLIC HEARINGS

Pursuant to the Administrative Procedure Act, Government Code, Chapter 2001, the Texas Department of Transportation will conduct three public hearings to receive comments concerning the proposed rules. Public hearings will be held at: 4:00 p.m. on April 25, 2005, at the Texas Department of Transportation Corpus Christi District office, 1701 South Padre Island Dr., Room A; 4:00 p.m. on May 4, 2005, in the first floor hearing room of the Dewitt C. Greer State Highway Building, 125 East 11th Street, Austin, Texas; and 4:00 p.m. on May 9, 2005, at the Texas Department of Transportation Dallas District office, 4777 E. Hwy 80, Dallas Room. These hearings will be conducted in accordance with the procedures specified in 43 Texas Administrative Code §1.5. Those desiring to make comments or presentations may register a half hour before the scheduled hearing time. Any interested persons may appear and offer comments, either orally or in writing; however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views and identical or similar comments through a representative member when possible. Comments on the proposed text should include appropriate citations to sections, subsections, paragraphs, etc. for proper reference. Any suggestions or requests for alternative language or other revisions to the proposed text should be submitted in written form. Presentations must remain pertinent to the issues being discussed. A person may not assign a portion of his or her time to another speaker. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are requested to contact Randall Dillard, Director, Public Information Office, 125 East 11th Street, Austin, Texas 78701-2483, 512/463-8588 at least two working days prior to the hearing so that appropriate services can be provided.

## SUBMITTAL OF COMMENTS

Written comments on the proposed amendments may be submitted to Bobby Killebrew, Deputy Director, Public Transportation Division, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on May 16, 2005.

## SUBCHAPTER B. STATE PROGRAMS

### 43 TAC §31.11

#### STATUTORY AUTHORITY:

The amendments are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department,

and more specifically, Transportation Code, §456.022, which requires the commission to adopt rules establishing a formula allocating funds among eligible public transportation providers; and Transportation Code, §461.003 which requires the commission to adopt rules necessary to implement Transportation Code, Chapter 361 and provides the commission with the authority to adopt rules to require certain state agencies to contract with the department for the department to assume the responsibilities of that agency relating to the provision of public transportation services, and to adopt rules to require a public transportation provider to provide detailed information on its public transportation services.

CROSS REFERENCE TO STATUTE: Transportation Code, §456.022.

#### §31.11. Formula Program.

(a) Purpose. Transportation Code, Chapter 456 requires the commission to allocate, at the beginning of each fiscal biennium, certain appropriated amounts from the public transportation fund. This section sets out the policies, procedures, and requirements for that allocation.

(b) Formula allocation. At the beginning of each state fiscal biennium, an amount equal to the amount appropriated from all sources to the commission by the legislature for that biennium for public transportation, other than federal funds and amounts specifically appropriated for coordination, technical support, or other costs of administration, will be allocated to designated recipients. The commission will allocate those funds between small urban and rural providers, with 35% [75%] of the funding allocated to small urban providers and 65% of the funding allocated to rural providers [based on population and 25% based on land area using the latest census data available from the United States Census Bureau, when applicable].

(1) Urban funds available under this section will be allocated to municipalities that are designated recipients or transit providers in urbanized areas that are not served by an authority and to designated recipients that received state transit funding during the fiscal biennium ending August 31, 1997, that are not served by an authority but are located in urbanized areas that include one or more authorities. Any local governmental entity having the power to operate or maintain a public transportation system, except an authority, may receive formula program funds. The commission will distribute the money in the following manner.

(A) Eighty percent will be awarded giving consideration to population by using the latest census data available from, and as defined by, the U.S. Census Bureau for each urbanized area relative to the sum of all urbanized areas. Any urban provider whose urbanized area population is 200,000 or greater will have the population adjusted to reflect a population level of 199,999.

(B) If the transit district is in good standing with the department and has no deficiencies and no findings of noncompliance, 20% will be awarded under clause (i) or (ii) of this subparagraph as follows.

(i) The commission, using all or a portion of the funds, may award funding to address strategic priorities for the urbanized public transportation program. These amounts are not subject to the transition funding allocation process described in subsection (c) of this section in succeeding fiscal years, and will be awarded on a competitive basis unless they are needed to compensate for funding anomalies arising under this subsection.

(ii) The commission will award the funding by giving equal consideration to local funds per operating expense[capita],

operating expenses per mile (inverted) as compared to the systems performance from the previous year, and ridership per capita [as compared to the systems performance from the previous year, and vehicle revenue miles as compared to the systems performance from the previous year]. Any urban provider whose urbanized area population is 200,000 or greater will have the aforementioned criteria adjusted on a pro rata basis to reflect a population level of 199,999. These criteria may be calculated using the subrecipient's annual audit for the previously completed fiscal year, data from other sources, or from the department's records.

(2) Rural funds available under this section will be allocated in nonurbanized areas. Any eligible recipient may receive formula program funds. Of the money allocated under this paragraph, the commission will distribute the money in the following manner.

(A) Eighty percent will be awarded giving consideration to population weighted at 75% and on land area weighted at 25% by using the latest census data available from, and as defined by, the U.S. Census Bureau for each nonurbanized area relative to the sum of all nonurbanized areas.

(B) If the transit district is in good standing with the department and has no deficiencies and no findings of noncompliance, 20% will be awarded under clause (i) or (ii) of this subparagraph as follows.

(i) The commission, using all or a portion of the funds, may award funding to address strategic priorities for the nonurbanized public transportation program. These amounts are not subject to the transition funding allocation process described in subsection (c) of this section in succeeding fiscal years, and will be awarded on a competitive basis unless they are needed to compensate for funding anomalies arising under this subsection.

(ii) The commission will award the funding by giving equal consideration to local funds per capita, operating expenses per mile (inverted) as compared to the systems performance from the previous year, ridership per capita as compared to the systems performance from the previous year, and vehicle revenue miles as compared to the systems performance from the previous year. These criteria may be calculated using the subrecipient's annual audit for the previously completed fiscal year, data from other sources, or from the department's records.

(3) Funds allocated under this section and any local funds may be used for any transit-related activity except that a designated recipient not included in a transit authority but located in an urbanized area that includes one or more transit authorities may only use funds to provide:

(A) 65% of the local share requirement for federally financed projects for capital improvements;

(B) 50% of the local share requirement for projects for operating expenses and administrative costs;

(C) 50% of the total cost of a public transportation capital improvement, if the designated recipient certifies that federal money is unavailable for the proposed project and the commission finds that the proposed project is vitally important to the development of public transportation in the state; and

(D) 65% of the local share requirement for federally financed planning activities.

(c) Transition. Each agency will have five years to transition to full formula allocation and during the five years after the first application of new census data from the United States Census Bureau,

the allocations under subsection (b)(1) and (2) of this section will be adjusted to avoid extreme short-term disruptions in the continuity of funding. During this time no award to a transit district under this section will be less than 90% of the award to that transit district for the previous fiscal year, except that fiscal year 2004 will be used as the base year when calculating allocations for fiscal year 2006 allocation of funds, after which succeeding allocations will be based on previous fiscal years [and no award to a transit district will be more than 120% of the award to that transit district for the previous fiscal year]. All allocations under subsection (b)(1) and (2) of this section are subject to revision to comply with this standard. If available funding exceeds the allocations, additional funding will be awarded by the commission on a pro rata basis, competitively, or a combination of both. Consideration for the award of these additional funds may include, but is not limited to, coordination and technical support activities, compensation for unforeseen funding anomalies, assistance with eliminating waste and ensuring efficiency, maximum coverage in the provision of public transportation services, and reductions in air pollution[allocated to the transit districts that have the lowest relative funding levels compared to the base]. These additional awards are not subject to the transition funding allocation process in succeeding fiscal years.

(d) Change in service area. If part of a transit district's service area is changed due to declaration by the United States Census Bureau, or if the service area is otherwise altered, the department and the subrecipient shall negotiate an appropriate adjustment in the funding awarded to that subrecipient for that funding year or any subsequent year, as appropriate. This negotiated adjustment is not subject to the minimum and maximum standards set forth in subsection (c) of this section.

(e) Unobligated funds. Any money under this section that the designated recipient has not applied for before the November commission meeting in the second year of a state fiscal biennium will be administered by the commission under the discretionary program described in §31.13 of this subchapter.

(f) Returned funds. Any money under this section that the designated recipient agrees to return to the department will be administered by the commission under the discretionary program described in §31.13 of this subchapter.

(g) Application. To receive funds allocated under this section, a designated recipient must first submit a completed application, in the form prescribed by the department, to the appropriate district. The application must include certification that the proposed public transportation project is consistent with continuing, cooperating, and comprehensive regional transportation planning implemented in accordance with 49 USC §5301 and §1602a. Federal approval of a proposed public transportation project will be accepted as a determination that all federal planning requirements have been met.

(h) Project evaluation. In evaluating a project under this section, the department will consider the need for fast, safe, efficient, and economical public transportation and the approval of the FTA, or its successor.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 1, 2005.  
TRD-200501372

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**SUBCHAPTER C. FEDERAL PROGRAMS**

**43 TAC §31.36**

**STATUTORY AUTHORITY:**

The amendments are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §456.022, which requires the commission to adopt rules establishing a formula allocating funds among eligible public transportation providers; and Transportation Code, §461.003 which requires the commission to adopt rules necessary to implement Transportation Code, Chapter 361 and provides the commission with the authority to adopt rules to require certain state agencies to contract with the department for the department to assume the responsibilities of that agency relating to the provision of public transportation services, and to adopt rules to require a public transportation provider to provide detailed information on its public transportation services.

**CROSS REFERENCE TO STATUTE:** Transportation Code, §456.022.

*§31.36. Section 5311 Grant Program.*

(a) Purpose. The Federal Transit Act, codified at 49 USC §5311, authorizes the Secretary of the United States Department of Transportation to make grants for public transportation projects in nonurbanized areas. The department has been designated by the governor to administer the Section 5311 program.

(b) Goal and objectives. The Department's goal in administering the Section 5311 program is to promote the availability of professional, cost-effective, efficient, and coordinated passenger transportation services to the general public in nonurbanized areas using the most efficient combination of financial and other resources. To achieve this goal, the objectives of the department are to:

(1) promote the development and maintenance of a network of general public transportation services in nonurbanized areas throughout the state, in partnership with local officials;

(2) fully integrate the Section 5311 program with other federal, state, and local resources that are designed to serve nonurbanized populations;

(3) improve the efficiency, effectiveness, and safety of Section 5311 systems through the provision of technical assistance; and

(4) include private sector operators in the overall plan to provide public transportation services.

(c) Department role. The department acts as the designated recipient for all Section 5311 funds appropriated to the state and has an oversight responsibility for all nonurbanized transit services within the state. The department, however, recognizes the subrecipients as partners who shall retain control of daily operations. As the administering agency, the department will:

(1) develop application materials and disseminate information to prospective applicants and other interested parties;

(2) allocate the available program funds in a fair and equitable manner as described in subsection (g) of this section (the department will not provide Section 5311 funds to more than one transit system in a geographical area);

(3) develop evaluation criteria and select projects for funding;

(4) prepare the state's annual program of projects and funding application and submit that material to the FTA for approval;

(5) negotiate and execute contracts with local Section 5311 subrecipients;

(6) prepare requests for federal reimbursement, and process payment requests from Section 5311 subrecipients;

(7) monitor and evaluate the progress of ongoing transportation operations, including compliance with federal regulations; and

(8) provide technical assistance to Section 5311 subrecipients to aid them in improving transit services.

(d) Eligible subrecipients. State agencies, local public bodies, private nonprofit organizations, Native American tribes and organizations, and operators of public transportation services are eligible to receive Section 5311 funds through the department. Private for-profit operators of public transportation services may participate in the program through contracts with eligible subrecipients. An entity must be a rural transit district to receive Section 5311 funds except that private for-profit operators of public transportation services and entities that are not rural transit districts are eligible to receive Section 5311 funds through the department under the intercity bus program, as set forth in subsections (g)(1) and (i) of this section.

(e) Eligible assistance categories. The following categories of expenses are eligible for federal reimbursement under the Section 5311 program.

(1) State administrative expenses. The department may use up to 15% of the annual federal apportionment to defray its expenses incurred for the administration of Section 5311 program. These funds may also be used to provide technical assistance to subrecipients. Technical assistance may include project planning, program development, management development, coordination of public transportation projects, and related research. Projects are solicited from subrecipients and other interested parties. State administrative and technical assistance expenses do not require a non-federal match.

(2) Capital expenses.

(A) Eligible items include, but are not limited to:

- (i) buses;
- (ii) vans or other paratransit vehicles;
- (iii) radios and communications equipment;
- (iv) passenger shelters, bus stop signs, and similar passenger amenities;
- (v) wheelchair lifts and restraints;
- (vi) vehicle rehabilitation, remanufacture, or overhaul;
- (vii) preventive maintenance, including all maintenance costs;
- (viii) extended warranties that do not exceed the industry standard;

- (ix) the mass transit portion of ferry boats and terminals;
- (x) operational support such as computer hardware or software;
- (xi) installation costs and vehicle procurement, testing, inspection, and acceptance costs;
- (xii) construction or rehabilitation of transit facilities, including design, engineering, and land acquisition;
- (xiii) facilities to provide access for bicycles to mass transit facilities and equipment for transporting bicycles on mass transit vehicles;
- (xiv) the lease of equipment or facilities, provided that the local subrecipient, with the concurrence of the department, determines that a lease is more cost effective than the purchase of equipment or facilities after considering management efficiency, availability of equipment, staffing capabilities and guidelines on capital leases as contained in 49 CFR Part 639;
- (xv) the capital portions of costs for service under contract;
- (xvi) joint development projects (FTA Circular 9300.1A, or its latest version, provides guidelines for joint development projects);
- (xvii) the introduction of new technology, through innovative and improved products, into mass transportation;
- (xviii) transit-related intelligent transportation systems; and
- (xix) the provision of ADA paratransit service, which shall not exceed 10% of the state's annual apportionment of Section 5311 funds and shall be used only by subrecipients that are in compliance with ADA requirements for both fixed route and demand responsive service.

(B) The capital cost of contracting includes depreciation, interest on facilities and equipment, and those allowable capital costs that would otherwise be incurred directly, including maintenance. No capital assets (vehicle, equipment, or facility) that have any remaining federal interest in them and no items purchased with state or local government funds may be capitalized under the grant agreement.

(C) Based on funding availability, federal funds may be used to reimburse up to 80% of eligible capital expenditures. The federal share may increase to up to 90% for bicycle facilities projects or for incremental costs related to compliance with the Clean Air Act or with the Americans with Disabilities Act of 1990. Eligibility standards for the higher federal share are defined in FTA Circular 9040.1E, or its latest version. The local subrecipient must provide a 20% or 10% cash match at the time the equipment is delivered or the services are received.

(3) Project administrative expenses. Costs not directly tied, but essential, to the operations of passenger transportation systems may be reimbursed at up to 80% with federal funds. The local subrecipient must provide a 20% match, either in cash or with in-kind donations.

(4) Operating expenses. Those costs directly tied to systems operations, such as fuel, oil, drivers', mechanics', and dispatchers' salaries, and replacement parts may be reimbursed at 50% of net operating costs. The local subrecipient must provide a 50% match, either in cash or with in-kind donations.

(f) Local share requirements. FTA program funds cannot be used as the local share required for Section 5311 grants. Eligible match

sources include local or state programs, or unrestricted federal funds. At least half of the local share for both net operating and non-operating expenses must be cash or cash equivalent from sources other than unrestricted federal funds. In-kind contributions, volunteer services, and donations are eligible as local share if the value is documented.

(g) Allocation of funds. As part of its administration of the Section 5311 program, the department is charged with ensuring that there is a fair and equitable distribution of program funds within the state (FTA Circular 9040.1E, or its latest version). The department will allocate Section 5311 funds to local subrecipients in the following manner.

(1) Reserve. Unless the governor certifies to the Secretary of the United States Department of Transportation that the intercity bus service needs of the state are being adequately met, the department will reserve not less than 15% of the Section 5311 federal apportionment for the development and support of intercity bus transportation to be allocated under subsection (i) of this section. If it is determined that all or a portion of the set-aside monies is not required for intercity bus service, those funds will be applied to the formula apportionment process described in paragraph (2) [(3)] of this subsection. Procedures for determining if a certification of adequacy is warranted are as follows.

(A) The department will review all data on intercity bus service availability, including outstanding requests from intercity operators, and levels of service.

(B) The department will consult with other state agencies that have jurisdiction with respect to intercity bus regulation and seek their recommendations as to the adequacy of current service.

(C) Based on the findings of subparagraphs (A) and (B) of this paragraph, the commission may certify or recommend that the governor certify to the adequacy of intercity bus service.

(2) Remaining balance allocation. Except as provided in paragraph (1) of this subsection, the balance of the annual Section 5311 federal apportionment, plus the remaining balance of previous Section 5311 federal apportionments, and any state funds appropriated specifically for the purpose of funding nonurbanized public transportation services will be allocated in the following manner.

(A) Eighty percent will be awarded giving consideration to population weighted at 75% and on land area weighted at 25% by using the latest census data available from, and as defined by, the U.S. Census Bureau for each nonurbanized area relative to the sum of all nonurbanized areas.

(B) If the transit district is in good standing with the department and has no deficiencies and no findings of noncompliance, 20% will be awarded under clause (i) or (ii) of this subparagraph as follows.

(i) The commission, using all or a portion of the funds, may award funding to address strategic priorities for the nonurbanized public transportation program. These amounts are not subject to the transition funding allocation process described in paragraph (3) of this subsection in succeeding fiscal years, and will be awarded on a competitive basis unless they are needed to compensate for funding anomalies arising under this subsection.

(ii) The commission will award the funding by giving equal consideration to local funds per capita, operating expenses per mile (inverted) as compared to the systems performance from the previous year, ridership per capita as compared to the systems performance from the previous year, and vehicle revenue miles as compared to the systems performance from the previous year. These criteria may be

calculated using the subrecipient's annual audit for the previously completed fiscal year, data from other sources, or from the department's records.

(3) Transition. Each agency will have five years to transition to full formula allocation and during the five years after the first application of new census data from the United States Census Bureau, the allocations under paragraphs (1) and (2) of this subsection will be adjusted to avoid extreme short-term disruptions in the continuity of funding. During this time no award to a transit district under this section will be less than 90% of the award to that transit district for the previous fiscal year, except that fiscal year 2004 will be used as the base year when calculating allocations for the next allocation of funds, after which succeeding allocations will be based on previous fiscal years [and no award to a transit district will be more than 120% of the award to that transit district for the previous fiscal year]. All allocations under paragraphs (1) and (2) of this subsection are subject to revision to comply with this standard. If available funding exceeds the allocations, additional funding will be awarded by the commission on a pro rata basis, competitively, or a combination of both. Consideration for the award of these additional funds may include, but is not limited to, coordination and technical support activities, compensation for unforeseen funding anomalies, assistance with eliminating waste and ensuring efficiency, maximum coverage in the provision of public transportation services, and reductions in air pollution[allocated to the transit districts that have the lowest relative funding levels compared to the base]. These additional awards are not subject to the transition funding allocation process in succeeding fiscal years.

(4) Adjustments to allocation.

(A) If part of a transit district's service area is changed due to declaration by the United States Census Bureau or the service area is otherwise altered, the department and that subrecipient shall negotiate an appropriate adjustment in the funding year or any subsequent year, as appropriate. This negotiated adjustment is not subject to the minimum and maximum standards set forth in paragraph (3) of this subsection.

(B) If a previously designated urbanized area is declared nonurbanized by the United States Census Bureau, a public

transportation subrecipient serving that area must apply for funds in accordance with paragraph (5) of this subsection.

(5) Application and contract. Prior to receiving funds a subrecipient must complete and comply with all application requirements, rules, and regulations applicable to the Section 5311 program. A completed application must be submitted, in a form prescribed by the department, to the appropriate district office, and document the need and demand for general public passenger transportation services. A contract shall be for no less than 12 months unless authorized by the department.

(h) Program of projects. All projects for a fiscal year will be identified in accordance with the allocation rules included in subsection (g) of this section. After commission approval of the allocation, these projects will be submitted to the FTA as the annual program of projects for the fiscal year.

(i) Intercity bus. If the governor does not certify to the adequacy of intercity bus transportation within the state, funds will be made available in accordance with subsection (g)(1) of this section. An annual request for proposals will be issued for projects complying with FTA definitions of intercity bus transportation.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 1, 2005.

TRD-200501373

Richard D. Monroe

General Counsel

Texas Department of Transportation

Earliest possible date of adoption: May 15, 2005

For further information, please call: (512) 463-8630

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# WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

## TITLE 43. TRANSPORTATION

### PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

#### CHAPTER 27. TOLL PROJECTS

#### SUBCHAPTER F. COUNTY TOLL ROADS

##### 43 TAC §27.72, §27.73

The Texas Department of Transportation withdraws the proposed amendments to §27.72 and §27.73 which appeared in the December 31, 2004, issue of the *Texas Register* (29 TexReg 12116).

Filed with the Office of the Secretary of State on April 1, 2005.

TRD-200501377

Richard D. Monroe

General Counsel

Texas Department of Transportation

Effective date: April 1, 2005

For further information, please call: (512) 463-8630

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# ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

## TITLE 19. EDUCATION

### PART 2. TEXAS EDUCATION AGENCY

#### CHAPTER 176. DRIVER TRAINING SCHOOLS SUBCHAPTER AA. COMMISSIONER'S RULES ON MINIMUM STANDARDS FOR OPERATION OF LICENSED TEXAS DRIVER EDUCATION SCHOOLS

##### 19 TAC §§176.1001 - 176.1019

The Texas Education Agency (TEA) adopts amendments to §§176.1001 - 176.1019, concerning driver training schools. The amendments to §§176.1001 - 176.1006, 176.1009, 176.1011 - 176.1017, and 176.1019 are adopted without changes to the proposed text as published in the January 21, 2005, issue of the *Texas Register* (30 TexReg 221) and will not be republished. The amendments to §§176.1007, 176.1008, 176.1010, and 176.1018 are adopted with changes to the proposed text. The sections establish minimum standards for operation of licensed Texas driver education schools. The adopted amendments remove provisions found to have limited or no statutory authority and reflect the codification of Vernon's Texas Civil Statutes, Article 4413(29c), titled the Texas Driver and Traffic Safety Education Act, into the Texas Education Code (TEC), Chapter 1001.

Texas Civil Statutes, Article 4413(29c), the Texas Driver and Traffic Safety Education Act, was codified by the 78th Texas Legislature, 2003, as Texas Education Code, Title 5, Chapter 1001. Also during 2003, there was a major reorganization of state government with a view toward streamlining regulatory processes and other governmental functions. In the course of reviewing aspects of the codification, it became apparent that a revision of 19 TAC Chapter 176 was necessary. Currently, rules in this chapter are organized in the following subchapters: Subchapter AA, Commissioner's Rules on Minimum Standards for Operation of Licensed Texas Driver Education Schools; Subchapter BB, Commissioner's Rules on Minimum Standards for Operation of Licensed Texas Driving Safety Schools and Course Providers; Subchapter CC, Commissioner's Rules on Minimum Standards for Operation of Texas Drug and Alcohol Driving Awareness Programs; and Subchapter DD, Commissioner's Rules on Hearings Held Under the Texas Education Code, Chapter 1001. The revisions presented in this adoption impact Subchapters AA, BB, and DD.

Comments from the driver training industry, consumers, legislators, and other stakeholders contributed to the revision of 19

TAC Chapter 176. Definitions were added to both Subchapters AA and BB to assist all parties in completely understanding certain terms used in the rules. In Subchapters AA, BB, and DD, references to Texas Civil Statutes, Article 4413(29c), were replaced with corresponding references to the Texas Education Code, Chapter 1001. A few references were not codified and those unchanged references now show the suffix "(Vernon's 2001)" to refer the reader to the prior version of the law. The decision not to codify non-operative language does not mean that the rule is no longer justified. Editorial changes to standardize language or correct grammar have been made throughout Subchapters AA and BB. These edits include changing reference to the division rather than the division director, as applicable, for clarification and changing reference to a driver's license rather than a driver license for consistency.

In order to correct references to newly codified statutory authority and to clarify and modify existing rule language, the following amendments to 19 TAC Chapter 176, Subchapter AA, are adopted.

The amendment to 19 TAC §176.1001 adds a new paragraph (6) to define "Contract site," a new paragraph (8) to define "Deferred adjudication," and a new paragraph (11) to define "Educational objectives." The amendment also rennumbers existing paragraphs accordingly. Renumbered paragraph (14) is modified to update the definition of "Primary school." Paragraphs (11) and (13), the definitions for "New course" and "Public or private school," respectively, were removed.

The amendment to renumbered 19 TAC §176.1001(12)(A) amends language to broaden the scope of prior felony convictions to be considered. In subparagraph (C) the length of time for consideration is shortened from ten years to seven. In subparagraph (D) unnecessary language has been removed. In subparagraph (D) new language has been added to set the ground rules to allow the division to consider prior similar violations. Subparagraph (E) was modified to correct grammar in defining good reputation. New subparagraph (G) has been added to address applicants who have received deferred adjudication in prior criminal cases.

No changes were made to §176.1001 since published as proposed.

The amendment to 19 TAC §176.1002(a) corrects a statutory citation. No changes were made to §176.1002 since published as proposed.

The amendment to 19 TAC §176.1003 modifies subsection (c)(1) to reflect the source of the decision and subsection (d) to make changes to the wording to clarify the date that a license becomes effective. The amendment also modifies subsection (e)(1) to include partnerships and corporations as ownership entities, subsection (e)(3) to correct grammar, subsection (f)(1) to change the



timeline for reporting a change of address, subsection (f)(2) to remove unnecessary requirements, subsection (f)(3) to change the refund for students who are prevented from completion to a pro-rata refund, and subsection (f)(4) to require a school to maintain a current e-mail address, if applicable. In addition, the amendment modifies subsection (g) to add paragraphs (5) and (6) as items required for renewal and previous paragraph (5) was renumbered to (7). In addition, subsection (i) was modified to correct language, subsection (j)(1) was revised to modify requirements related to school closures, subsection (j)(2) was amended to clarify when the division may declare a school closed, subsection (j)(3) changed the student refund to pro-rata in school closure situations, subsection (k) uses the newly defined "contract site" language, and subsection (l) was deleted.

No changes were made to §176.1003 since published as proposed.

The amendment to 19 TAC §176.1004 deletes language in subsection (a) for clarification. In subsection (b), paragraphs (2) and (8) were deleted and paragraphs (3) through (7) were renumbered. Subsection (c) was modified to correct a statutory citation.

No changes were made to §176.1004 since published as proposed.

The amendment to 19 TAC §176.1005 changes subsection (a)(2) to delete subparagraph (A), shorten the required experience/educational requirement in subparagraph (B), and remove the experience requirement in subparagraph (C) as well as renumber those items. This amendment also modifies subsection (b) to allow a school director, assistant director, or school owner to determine duties of an administrative staff member and deletes paragraphs (1) and (2). Subsections (c) and (d) were modified to make corresponding corrections.

No changes were made to §176.1005 since published as proposed.

The amendment to 19 TAC §176.1006 modifies subsection (a)(3) to clarify the driver's license requirement and subsection (b)(3) to change division director to division. Subsection (b)(4) was deleted. The amendment also revises subsections (c)(1)(A)(i) and (ii) and (c)(2)(A)(i) and (ii) to clarify the types of testing and certification required. The changes in subsection (c)(3)(A)(iii) and (c)(4)(A)(i) and (iii) clarify licensing requirements. The changes in subsection (c)(4)(B) allow a teaching assistant (full) to assist in the classroom phase of driver education and require a driver education teacher or supervising teacher to endorse all instruction provided by the teaching assistant (full) or allow the school to endorse the records in emergency situations. The amendment deletes subsection (c)(4)(B)(i) through (iii) and amends language in (c)(5)(A)(i). The amendment modifies subsection (c)(5)(B) to restrict the allowed activities to in-car instruction, deletes subsection (c)(6), and replaces language in subsection (d) to clarify the renewal process.

The amendment to 19 TAC §176.1006 also modifies subsection (e)(1)(D) to remove the requirement for director approval of certain continuing education programs, subsection (e)(1)(E) to add specialized driving safety courses and drug and alcohol driving awareness programs to acceptable continuing education courses, subsection (e)(3) to add a time limit for completion of the same continuing education course, and subsection (e)(5) to clarify the type of continuing education credit allowed. The amendment changes subsection (f) to clarify educational background evidence that does not have to be resubmitted for

reapplication after a license has expired; subsection (g)(2) to remove unnecessary language; and subsection (j) to remove the reference to a subsection, broadening the types of documents required. The amendment deletes subsections (k) and (n), renumbers subsequent subsections, and modifies renumbered subsections (m)(1)(A) and (m)(4) to correct statutory citations. In addition, language in subsection (m), formerly subsection (o)(7), was moved as part of the definition found in 19 TAC §176.1001(12)(G).

No changes were made to §176.1006 since published as proposed.

The amendment to 19 TAC §176.1007(b)(1)(B) revises the subsection to clarify driver education curricula language and add the requirement that the curricula cover the dangers of locking children in vehicles unattended and distractions while driving. The revision to this subsection (b) also deletes all references to the ten-module curriculum that forms the basis for the Program of Instruction for Driver Education and Traffic Safety. In subsection (b)(1), clarification is provided in the following subparagraphs: (C) enrollment procedures, (D) the sequence of instruction, (E) instructor qualifications and availability, (F) instructional resources, (H) access to instructional materials, (I) requirement for a copy of the Texas Driver Handbook, and (J) requirement for seating for all students. Further modifications in subsection (b)(1) include those in subparagraph (K) to remove unnecessary language, subparagraph (L) to include completion of make-up work, subparagraph (M) to delete language to simplify terms and language describing a school's responsibility, subparagraph (O) to reference the division rather than the director, subparagraph (P) to delete unnecessary language defining simulators, subparagraph (Q) to add language to clarify the requirement for seven hours of in-car observation, subparagraph (R) to clarify the block program and concurrent program, and subparagraph (U) to correct a statutory citation.

The amendment to 19 TAC §176.1007 also revises subsection (b)(2)(A) to clarify the definition of adult driver education. The amendment modifies subsection (b)(2)(B) in clause (i) to clarify the minimum course content language while clause (ii)(I) provides language to allow a teaching assistant (full) to provide classroom instruction and require an instructor to be in appropriate proximity to the student. Also in clause (ii), subclause (II) allows study material equivalent to the Texas Driver Handbook and subclauses (III) through (V) inclusive were deleted. The amendment modifies subsection (c)(5) to remove the requirement that instructor development courses be taught at a licensed driver education school and replaces the term "self-study" with more explicit language. The amendment changes subsection (d) by revising paragraph (1) to reduce the required number of hours for a continuing education class from six to four and paragraph (5) to remove the requirement to notify the division ten days prior to a continuing education class presentation. In subsection (g), the amendment lengthens the time for reporting when a course is discontinued from 72 hours to five days. In subsection (i), paragraphs (1) through (3) were modified by grammatical changes to clarify language, paragraph (4) to correct a statutory citation, and paragraph (5) was deleted.

In response to public comment, §176.1007 was modified after published as proposed. Subsection (b)(1)(C) was revised to clarify the information required in a student contract regarding uniform beginning and ending dates for students in the same class.

The amendment to 19 TAC §176.1008 revises subsection (a) for clarity. In subsection (b), revisions in paragraph (1) remove the

requirement for social security numbers on student contracts and paragraph (19)(A) add the word "or" to clarify that any of the three documents suffice as evidence. The amendment also revises subsection (d) to change the requirement for delivery of the original contract and subsection (f) to remove the requirement that proposed or amended contracts be approved prior to use.

In response to public comment, §176.1008 was modified after published as proposed. As proposed, paragraph (12) would have been revised to remove the requirement for a statement to include indication of the date classroom instruction is scheduled to end and the amount of time a student has to complete all make-up assignments and in-car instruction and the requirement of a parent to initial completion dates on the contract. Language to clarify the meaning of uniform beginning and ending dates was reinstated.

The amendment to 19 TAC §176.1009 modifies paragraph (1) to correct terms and paragraph (2) to allow multiple procedures for ensuring student mastery. Paragraphs (4) and (6) were deleted and paragraph (5) was renumbered.

No changes were made to §176.1009 since published as proposed.

The amendment to 19 TAC §176.1010 modifies subsection (a) to clarify the requirement for attendance and attendance records; subsection (b) to delete language that was added to subsection (a); and subsection (c) to increase the number of hours of driver education training allowed from four to five per day. Also in subsection (c), paragraphs (1) - (3) were deleted and paragraphs (4) and (5) were renumbered. New paragraph (4) reflects new language that allows combining instruction methods. New subsection (d) was added which limits certain behind-the-wheel instruction and reorders the remaining subsections. The adoption also modifies renumbered subsection (e) to increase the amount of time from 25% of the 32 hour total (8 hours) to ten hours that a driver education student can be absent from class and later make up and subsection (g) to delete unnecessary language and add a ten-hour ceiling to make up assignments outside of class. The amendment modifies subsection (g) in paragraph (1) to add language to allow make-up work on the same date as the absence and in paragraph (2) to clarify language concerning documentation of take-home make-up work.

In response to public comment, §176.1010 was modified after published as proposed. Previous subsection (h) has been reinstated as subsection (i) to clarify conformance with uniform contract beginning and ending dates. The subsequent subsection was renumbered accordingly.

The amendment to 19 TAC §176.1011 deletes subsection (a) and requires that the conduct policy must be delivered to the parent or guardian signing the contract. Paragraph (2) was revised to remove language for clarity.

No changes were made to §176.1011 since published as proposed.

The amendment to 19 TAC §176.1012 modifies subsections (a), (c), (d), and (e) to correct the statutory citations. The modification in subsection (c) sets the interest rate on unpaid refunds at 250%. The modification in subsection (e)(1) deletes the requirement to list student social security numbers.

No changes were made to §176.1012 since published as proposed.

The amendment to 19 TAC §176.1013 includes deleting subsections (a) and (b) and renumbering the subsequent subsections. New subsection (a) clarifies what facilities may be used. New subsection (b) restates the language to clarify that no driver education instruction may be located in a private residence. New subsection (c) requires writing facilities for students and new subsection (d) makes a grammar correction.

No changes were made to §176.1013 since published as proposed.

The amendment to 19 TAC §176.1014 revises subsection (a) by adding a new paragraph (6) which requires vehicles to be able to pass state inspection at the time of use; current paragraphs (6) and (7) were deleted. The amendment modifies subsection (b) to require the submission of a current list of motor vehicles used for instruction. Subsection (d) was modified to add language that includes unsafe vehicles as defined in the subsection to violations that may result in a civil penalty. The adoption deletes subsection (e) and renumbers the following subsection.

No changes were made to §176.1014 since published as proposed.

The amendment to 19 TAC §176.1015 removes the requirement for division approval of grievance procedures and adds language clarifying student record maintenance and availability. Subsection (b) was deleted.

No changes were made to §176.1015 since published as proposed.

The amendment to 19 TAC §176.1016 adds language to subsection (a) and requires schools to accurately complete all school records and applications. Modifications were made in subsection (b) to clarify where and for how long school records must be maintained. Subsection (c) was deleted and replaced by applicable current provisions that revise and refine to clarify what daily records must be maintained for each student. The new subsection (c) includes new paragraph (1) that specifies required legend entries, paragraph (2) for items in the classroom individual student record form, paragraph (3) for items in the in-car individual student record form, and paragraph (4) regarding retention of the DE-964. Subsection (e) was deleted.

No changes were made to §176.1016 since published as proposed.

The amendment to 19 TAC §176.1017 modifies subsection (a) to add language to include names of licensed course providers or approved driving safety courses to those names that may not be adopted or used and adds driving safety school or course provider to the licenses that cannot be the same or deceptively similar to an already licensed name. Subsection (b) was simplified by deleting unnecessary language. Subsection (f) was updated to add civil penalty to the sanctions that may be invoked. Subsections (g) and (h) were deleted.

No changes were made to §176.1017 since published as proposed.

The amendment to 19 TAC §176.1018 modifies subsection (a) to replace language with the new term "contract sites." A change in subsection (b)(1) clarifies language on ordering DE-964 forms, and in subsection (b)(3) adds language to require that copies of DE-964s must be submitted at least once every 90 days. The revision in subsection (b)(4) clarifies language regarding the DE-964 and in subsection (b)(5) changes the reporting period from two days to five days, and removes language that limited

the types of missing DE-964s covered. Subsection (c) was deleted and the following subsection renumbered.

In addition, a technical edit was made to §176.1018 since published as proposed. Subsection (a) was modified to reinstate the words "schools and" for grammatical correctness.

The amendment to 19 TAC §176.1019 modifies subsections (a), (c), and (e) to correct the statutory citations. The change in subsection (b) rewords the language that sets the time limit for late fees and in subsection (d)(8) adds assistant director to the fee list.

No changes were made to §176.1019 since published as proposed.

Following is a summary of public comments received and corresponding agency responses regarding the proposed revisions to 19 TAC Chapter 176, Subchapter AA.

**Comment.** An individual expressed opposition to the proposed revisions if any changes would in any way restrict a parent's right to teach their children to drive responsibly.

**Agency response.** The agency disagrees. The proposed revisions to 19 TAC Chapter 176 do not affect a parent's right to teach their child to drive. That program, the parent-taught program of driver education, is administered by the Texas Department of Public Safety and is beyond the scope of these rules.

**Comment.** An individual expressed criticism of the manner in which the proposal was presented on the web page and suggested that the format for posting be changed so that rules are summarized in two paragraphs and that any documents referred to in the posting are also summarized.

**Agency response.** The agency disagrees. The agency adheres to Government Code requirements for making available explanatory information through the Internet, including presenting the text of its rules.

**Comment.** The director of the Colony Driving School suggested reinstating the language in rule that requires an expiration date in driver education contracts.

**Agency response.** The agency agrees. Sections 176.1007(b)(1)(C), 176.1008(b)(12), and 176.1010(i), previously subsection (h), were modified accordingly to include reference to timelines in student enrollment contracts.

The amendments are adopted under the Texas Education Code, §1001.053, which authorizes the commissioner of education to adopt and enforce rules necessary to administer driver and traffic safety education and to ensure the integrity of approved driving safety courses and to enhance program quality.

The amendments implement the Texas Education Code, §1001.051 and §1001.053.

#### *§176.1007. Courses of Instruction.*

(a) The educational objectives of driver training courses shall include, but not be limited to, promoting respect for and encouraging observance of traffic laws and traffic safety responsibilities of driver education and citizens; reducing traffic violations; reducing traffic-related injuries, deaths, and economic losses; and motivating development of traffic-related competencies through education, including, but not limited to, Texas traffic laws, risk management, driver attitudes, courtesy skills, and evasive driving techniques.

(b) This section contains requirements for driver education courses. For each course, curriculum documents and materials may be requested as part of the application for approval.

#### (1) Teenage driver education.

(A) The driver education classroom phase for students between the ages of 14 - 18 shall consist of a minimum of 32 hours of classroom instruction. The in-car phase must consist of 7 hours of behind-the-wheel instruction and 7 hours of in-car observation. Schools are allowed five minutes of break per instructional hour for all phases. No more than ten minutes of break time may be accumulated for each two hours of instruction.

(B) Driver education course curriculum content, minimum instruction requirements, and administrative guidelines for classroom instruction, in-car training (behind-the-wheel and observation), simulation, and multicar range shall include the educational objectives established by the commissioner of education and meet the requirements of this subchapter. Schools may use sample instructional modules developed by the Texas Education Agency (TEA) or develop their own instructional modules based on the approved Program of Instruction for Driver Education and Traffic Safety. The educational objectives are organized into all topics and include objectives for classroom and in-car training (behind-the-wheel and observation), simulation lessons, parental involvement activities, and evaluation techniques. In addition, the educational objectives shall include information relating to litter prevention, anatomical gifts, leaving children in vehicles unattended, distractions, and alcohol awareness and the effect of alcohol on the effective operation of a motor vehicle that must be provided to every student enrolled in a teenage driver education course.

(C) Driver education schools that desire to instruct students ages 14-18 shall provide the same beginning and ending dates for each student in the same class of 36 or less. No student shall be allowed to enroll and start the classroom phase after the sixth hour of classroom instruction has been completed.

(D) Students shall proceed in the sequence identified in the Program of Instruction for Driver Education and Traffic Safety approved for that school.

(E) Students shall receive classroom instruction from an instructor who is approved and licensed by TEA. An instructor shall be in the classroom and available to students during the entire 32 hours of instruction, including self-study assignments. Instructors shall not have other teaching assignments or administrative duties during the 32 hours of classroom instruction.

(F) Motion picture films, slides, videos, tape recordings, guest speakers, and other instructional media that present concepts required in the Program of Instruction for Driver Education and Traffic Safety may be used as part of the required 32 hours of classroom instruction. These instructional aids shall not exceed 640 minutes of the total 32 hours.

(G) Self-study assignments occurring during regularly scheduled class periods shall not exceed 25% of the course and shall be presented to the entire class simultaneously.

(H) Each classroom student shall be provided a driver education textbook designated by the commissioner of education or access to instructional materials that are in compliance with the Program of Instruction for Driver Education and Traffic Safety approved for the school. Instructional materials, including textbooks, must be in a condition that is legible and free of obscenities.

(I) A copy of the current edition of the "Texas Driver Handbook" or instructional materials that are equivalent shall be furnished to each student enrolled in the classroom phase of the driver education course.

(J) Each student, including make-up students shall be provided their own seat and table or desk while receiving classroom instruction. A school shall not enroll more than 36 students, excluding make-up students, and the number of students may not exceed the number of seats and tables or desks available at the school.

(K) When a student changes schools, the school must follow the current transfer policy developed by TEA and Texas Department of Public Safety (DPS).

(L) All classroom phases of driver education, including make-up work, shall be completed within the timelines stated in the original student contract. This shall not circumvent the attendance and progress requirements.

(M) All in-car lessons shall consist of actual driving instruction. No school shall permit a ratio of more than four students per instructor or exceed the seating and occupant restraint capacity of the vehicle used for instruction. Schools that allow one-on-one instruction shall notify the parents in the contract.

(N) A student must have a valid driver's license or instruction permit in his or her possession during behind-the-wheel instruction.

(O) All in-car instruction shall begin no earlier than 5:00 a.m. and end no later than 11:00 p.m. The division may approve exceptions; however, the request shall be made in writing by the school owner or school director and include acknowledgment by all parents in the form of signatures.

(P) A school may use multimedia systems, simulators, and multicar driving ranges for in-car instruction in a driver education program. Each simulator, including the filmed instructional programs, and each plan for a multicar driving range must meet state specification developed by DPS and TEA.

(Q) A minimum of four periods of at least 55 minutes per hour of instruction in a simulator may be substituted for one hour of in-car instruction. A minimum of two periods of at least 55 minutes per hour of multicar driving range instruction may be substituted for one hour of in-car instruction relating to elementary or city driving lessons. However, a minimum of four hours must be devoted to behind-the-wheel instruction. Seven hours of in-car observation is required regardless of combinations used.

(R) A driver education program may be scheduled with the classroom phase of instruction presented in block form prior to the in-car phase or concurrently with the in-car phase. Under the block program, a student may apply to the DPS for an instruction permit after completing all of the required classroom instruction. Under the concurrent program, the student may apply to the DPS for an instruction permit after completing six hours of classroom instruction designated by the commissioner of education found in the Program of Instruction for Driver Education and Traffic Safety.

(S) When a student receives an instruction permit from DPS under the concurrent schedule provision, the instructor must record the license number. A student licensed under the concurrent program must subsequently complete the required classroom instruction. If a student does not subsequently complete the required class instruction, the instructor must complete DPS Form DL-42 and send it to the DPS division responsible for license and driver records. Form DL-42 should be prepared as soon as it is evident the student will not

complete the required hours of instruction. The DPS may then revoke the student's instruction permit. Form DL-42 should not be prepared and submitted to DPS when the student successfully completes the classroom phase of instruction.

(T) Driver education instruction is limited to eligible students who are at least 14 years of age when the driver education classroom phase begins and who will be 15 years of age or older when the behind-the-wheel and multicar range instruction begins.

(U) Each school owner that teaches driver education courses shall collect adequate student data to enable TEA to evaluate the overall effectiveness of the driver education course in reducing the number of violations and accidents of persons who successfully complete the course. The commissioner of education may determine a level of effectiveness that serves the purposes of Texas Education Code, Chapter 1001.

(2) Adult driver education. Courses offered to persons who are over 18 years old must be offered in accordance with the following guidelines.

(A) Driver education schools that offer a classroom driver education program for the purpose of preparing an adult to pass the written examination required to obtain a learner's permit or driver's license shall submit and receive approval of the course from TEA. The request for approval must include a syllabus, contract, and instructional records that will be used with the course.

(B) An adult driver education course may be approved as required under Transportation Code, §521.222(c), if the course meets the minimum standards outlined in this paragraph.

(i) Minimum course content. For students desiring to obtain an instruction permit under a concurrent program, the adult driver education course shall consist of a minimum six clock hours of classroom instruction that meets or exceeds the minimum requirements for the first six hours of a teenage driver education outlined in the Program of Instruction for Driver Education and Traffic Safety approved by TEA.

(ii) Course management. An approved adult driver education course shall be presented in compliance with the following guidelines.

(I) Students shall receive classroom instruction from a licensed supervising teacher, driver education teacher, or teaching assistant (full). The instructor shall be physically present in appropriate proximity to the student for the type of instruction being given.

(II) A copy of the current edition of the "Texas Driver Handbook" or study material that is equivalent shall be furnished to each student enrolled in the course.

(c) This section contains requirements for driver education instructor development courses. For each course, the following curriculum documents and materials are required to be submitted as part of the application for approval. If the course meets the minimum requirements set forth in this subchapter, the division may grant an approval. Schools desiring to provide driver education instructor development courses shall provide an application for approval that shall be in compliance with this section.

(1) Schools desiring to obtain approval for a driver education instructor development course shall request an application for approval from TEA. All instructor development curricula submitted for approval shall meet or exceed the requirements set forth for approved programs offered at colleges, universities, school districts, or educational service centers and shall be specific to the area of specialization.

Guidelines and criteria for the course shall be provided with the application packet, and the school shall meet or exceed the criteria outlined.

(2) Prior to enrolling a student in a driver education instructor development course, the school owner or representative must obtain proof that the student has a high school diploma or equivalent. A copy of the evidence must be placed on file with the school. Further, the school shall obtain and evaluate a current official driving record from the student prior to enrollment. The individual must not have accumulated ten or more penalty points in the past three-year period on a driving record evaluation. The school must use the standards for assessing penalty points for convictions of traffic law violations and accident involvements appearing on the instructor's current driving record established by the DPS that are the same as those used for Texas school bus drivers.

(3) Instruction records shall be maintained by the school and supervising teacher for each instructor trainee and shall be available for inspection by authorized division representatives at any time during the training period and/or for license investigation purposes. The instruction record shall include: the trainee's name, address, driver's license number, and other pertinent data; name and instructor license number of the person conducting the training; and dates of instruction, lesson time, and subject taught during each instruction period. Each record shall also include grades or other means of indicating the trainee's aptitude and development. Upon satisfactory completion of the training course, the supervising teacher conducting the training will certify one copy of the instruction record for attachment to the trainee's application for licensing, and one copy will be maintained in a permanent file at the school.

(4) All student instruction records submitted for the approved instructor development courses shall be original documents.

(5) A properly licensed supervising teacher shall teach the course. The supervising teacher may allow driver education teachers and teaching assistants to provide training in areas appropriate for their level of certification and/or licensure. The supervising teacher must be in appropriate proximity during all instruction except independent study and research assignments which shall not exceed 25% of the total training program time.

(6) Schools desiring to teach driver education instructor development courses shall either submit course offerings as a part of the school application or, if offered periodically, submit the dates and scheduled instructors' names and license numbers before teaching the course.

(d) This section contains requirements for driver education continuing education courses.

(1) Driver education school owners may receive an approval for a four-hour continuing education course and provide the approved course to instructors to ensure that instructors meet the requirements for continuing education.

(2) The request for course approval shall contain the following:

- (A) a description of the plan by which the course will be presented;
- (B) the subject of each unit;
- (C) the educational objectives of each unit;
- (D) time to be dedicated to each unit;
- (E) instructional resources for each unit, including names or titles of presenters and facilitators; and

(F) a plan by which the school owner will monitor and ensure attendance and completion of the course by the instructors within the guidelines set forth in the course.

(3) A continuing education course may be approved if TEA determines that:

(A) the course constitutes an organized program of learning that enhances the instructional skills, methods, or knowledge of a licensed driver education instructor;

(B) the course pertains to subject matters that relate directly to the practice of driver education instruction, instruction techniques, or driver education-related subjects; and

(C) the entire course shall be taught by individuals with recognized experience or expertise in the area of driver education or related subjects. The division may request evidence of the individuals' experience or expertise.

(4) Driver education school owners may not offer the same continuing education course to instructors each year. In order to continue to offer a course, a new or revised continuing education course shall be submitted to TEA for approval.

(5) The division must be notified of the scheduled dates, times, and locations of all continuing education courses prior to the first day of class.

(e) A branch school may offer only a course that is approved for the primary school.

(f) Schools applying for approval of additional courses after the original approval has been granted shall submit the documents designated by the division with the appropriate fee. Courses shall be approved before soliciting students, advertising, or conducting classes. An approval for an additional course shall not be granted if the school's compliance is in question at the time of application.

(g) If an approved course is discontinued, the division shall be notified within five days of discontinuance and furnished with the names and addresses of any students who could not complete the course because it was discontinued. If the school does not make arrangements satisfactory to the students and the division for the completion of the courses, the full amount of all tuition and fees paid by the students are due and refundable. If arrangements are not made satisfactory to the students and the division, the refunds must be made no later than 30 days after the course was discontinued. Any course discontinued shall be removed from the school's approval.

(h) If, upon review and consideration of an original, renewal, or amended application for course approval, the commissioner of education determines that the applicant does not meet the legal requirements, the commissioner shall notify the applicant, setting forth the reasons for denial in writing.

(i) The commissioner of education may revoke approval of a school's courses under certain circumstances, including, but not limited to, the following.

(1) Information contained in the application for the course approval is found to be untrue.

(2) The school has failed to maintain the instructors, facilities, equipment, or courses of study on the basis of which approval was issued.

(3) The school offers a course which has not been approved or for which there are no instructors or equipment.

(4) The school has been found to be in violation of Texas Education Code, Chapter 1001, and/or this chapter.

*§176.1008. Student Enrollment Contracts.*

(a) A written legal student enrollment contract shall be executed prior to the school's receipt of any money.

(b) All driver education student enrollment contracts shall contain at least the following:

- (1) the student's legal name and driver's license number;
  - (2) the student's address, including city, state, and zip code;
  - (3) the student's telephone number;
  - (4) the student's date of birth;
  - (5) the full legal name and license number of the primary school or the branch school;
  - (6) the specific course to be taught;
  - (7) the agreed total contract charges that itemize all tuition, fees, and other charges;
  - (8) the terms of payment;
  - (9) the number of classroom lessons;
  - (10) the length of each lesson or course;
  - (11) the school's cancellation and refund policy;
  - (12) a statement indicating the specific location, date, and time that classroom instruction is scheduled to begin; the date classroom instruction is scheduled to end; and the amount of time a student has to complete all make-up assignments and in-car instruction;
  - (13) the number of in-car lessons;
  - (14) the rate per lesson or course for classroom instruction;
  - (15) the rate per lesson or course for in-car instruction;
  - (16) the rates for use of a school car for a road test (if an extra charge is made);
  - (17) a statement that the school maintains a business insurance policy for vehicles with coverage as required by Transportation Code, Chapter 601, and uninsured or underinsured coverage;
  - (18) the signature of a school representative; and
  - (19) the student's signature or, if the driver education student is younger than 18, the signature of the parent or guardian. The signature of the parent or guardian is not required for an individual younger than 18 who is, or has been, married or whose disabilities of minority have been removed generally by law. Instead, such an individual shall:
    - (A) present a marriage certificate or a divorce decree (but not an annulment decree) or other satisfactory evidence of marriage or of having been married; or
    - (B) present a court order showing removal of disabilities of minority; or
    - (C) present a notarized parental authorization.
- (c) In addition, all driver education student enrollment contracts shall contain statements substantially as follows.
- (1) I have been furnished a copy of the school tuition schedule; cancellation and refund policy; and school regulations pertaining to absence, grading policy, progress, and rules of operation and conduct.

(2) The school is prohibited from issuing a DE-964 if the student has not met all of the requirements for course completion, and the student should not accept a DE-964 under such circumstances.

(3) This agreement constitutes the entire contract between the school and the student, and assurances or promises not contained herein shall not bind the school or the student.

(4) I further realize that any grievances not resolved by the school may be forwarded to Driver Training, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. The current telephone number of the division shall also be provided.

(d) A copy of the enrollment contract shall be delivered to the parent or guardian that signed the contract.

(e) A copy of each enrollment contract shall be a part of the student files maintained by all driver education schools.

(f) Schools shall submit proposed or amended enrollment contracts to the division.

(g) Student enrollment contracts used at branch schools must be those approved for use at the primary school.

*§176.1010. Attendance and Makeup.*

(a) Written records of student attendance shall be prepared daily to document the attendance and absence of the students. A student must make up any time missed.

(b) Schools are allowed five minutes of break per instructional hour.

(c) Driver education training is limited to five hours per day. Classroom instruction shall not exceed two hours per day, excluding make-up work. In-car instruction shall not exceed three hours per day as follows:

- (1) three hours or less of in-car training; however, behind-the-wheel instruction is limited to one hour per day, except as provided in subsection (d) of this section; or
- (2) three hours or less of simulation instruction; or
- (3) three hours or less of multicar range instruction; or
- (4) any combination of the methods delineated in this subsection that does not exceed three hours per day.

(d) A two-hour increment of behind-the-wheel instruction may be offered once during the behind-the-wheel instruction for each student and shall include ten minutes of instructional break after 55 minutes of instruction as identified in §176.1007(b)(1)(A) of this title (relating to Courses of Instruction).

(e) The attendance policy shall limit a student's absences to no more than ten classroom hours of a 32-classroom-hour session. A student whose classroom enrollment is terminated for violating the attendance policy may not reenter before the start of the next new class.

(f) The student may receive credit for previous training if the student reenters and completes the applicable portion of the course within the timeline specified in the original student enrollment contract, starting from the first scheduled day of class on the original contract.

(g) Schools shall submit a make-up policy to the division for approval. All absences are subject to the attendance policy regardless of whether the student attends make-up lessons. Students may be allowed to complete up to ten hours of classroom make-up work assignments outside of regularly scheduled classroom instruction. Schools shall not initiate nor encourage absences. Make-up policies shall adhere to the following requirements:

(1) For a policy that allows a student to attend a missed lesson on the same date or at a later date at a regularly scheduled class, the class shall be engaged in the same lesson the student missed previously.

(2) For a policy that allows a student to perform an individual make-up lesson, a sample of each make-up lesson, clearly labeled as "makeup for the driver education course," shall be available for review by the Texas Education Agency at the school. Each lesson shall be clearly identified as a make-up lesson and identified as to the units of instruction to be covered. Evidence of make-up completed outside of regularly scheduled classroom instruction shall be placed in the student file.

(h) A school may allow a student to attend an alternative class on the same calendar day if the sequence of instruction will be maintained by the identical lesson being offered. The student instruction record shall reflect the time of day the alternative class was attended. A student selecting alternative scheduling shall not be considered absent.

(i) Except as provided in subsection (j) of this section, the enrollment of students who do not complete all required instructional hours within the timelines specified in the original student enrollment contract will be terminated.

(j) Variances to the timelines for completion of the driver education instruction stated in the original student enrollment contract may be made at the discretion of the school owner and must be agreed to in writing by the parent or guardian.

*§176.1018. Driver Education Certificates (DE-964).*

(a) The DE-964 shall be issued only to primary driver education schools. The primary driver education school shall maintain a record reconciling all DE-964s that are distributed to branch driver education schools and contract sites.

(b) School owners shall be responsible for the DE-964 in accordance with this subsection.

(1) A licensed or exempt driver education school may request the serially numbered DE-964s by submitting an order form provided by the Texas Education Agency (TEA) stating the number of DE-964s to be purchased and including payment of all appropriate fees. The form shall have the original signature of the driver education school owner or school director.

(2) A driver education school shall not transfer DE-964s to a school other than the school for which the certificates were ordered from TEA, without written approval from the division.

(3) Each driver education school owner shall maintain the TEA copies of the DE-964s in ascending numerical order. The driver education school owner shall submit the TEA copies of all issued certificates to TEA at least once every 90 days. The school owner shall return unissued DE-964s to TEA within 30 days from the date the school discontinues the driver education program, unless otherwise notified.

(4) Each driver education school owner shall ensure that the policies concerning the DE-964 are followed and communicated to all instructors and employees of the school and that the DE-964s are signed and issued as approved by TEA.

(5) The driver education school owner or school director shall maintain effective protective measures to ensure that unissued DE-964s are secure. The driver education school owner or school director shall report all unaccounted DE-964s to the division within five working days of the discovery of the incident. In addition, the driver education school shall be responsible for conducting an investigation to determine the circumstances surrounding the unaccounted DE-964s. A

report of the findings of the investigation, including preventative measures for recurrence, shall be submitted to the division within 30 days of the discovery. Failure to provide adequate security may result in action against the instructor and/or school approvals and licenses. Each unaccounted DE-964 may be considered a separate violation within the meaning of Texas Education Code, §1001.553(b)

(6) No driver education school owner or employee shall complete, issue, or validate a DE-964 to a person who has not successfully completed the entire portion of the course for which the DE-964 is being issued.

(c) If a driver education school issues a duplicate DE-964, the duplicate shall indicate the control number of the original DE-964.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 1, 2005.

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Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

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For further information, please call: (512) 475-1497

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**SUBCHAPTER BB. COMMISSIONER'S  
RULES ON MINIMUM STANDARDS FOR  
OPERATION OF LICENSED TEXAS DRIVING  
SAFETY SCHOOLS AND COURSE PROVIDERS**

The Texas Education Agency (TEA) adopts amendments to §§176.1101 - 176.1105, 176.1107 - 176.1109, 176.1111 - 176.1113, and 176.1116 - 176.1118, and the repeal of and new §176.1110, concerning driver training schools. The amendments to §§176.1101 - 176.1103, 176.1105, 176.1107 - 176.1109, 176.1111 - 176.1113, and 176.1116 - 176.1118 and the repeal of §176.1110 are adopted without changes to the proposed text as published in the January 21, 2005, issue of the *Texas Register* (30 TexReg 240) and will not be republished. The amendment to §176.1104 and new §176.1110 are adopted with changes to the proposed text. The sections establish minimum standards for operation of licensed Texas driving safety schools and course providers. The adopted amendments, repeal, and new rule remove provisions found to have limited or no statutory authority; repeal and replace the rule governing alternative delivery methods; and reflect the codification of Vernon's Texas Civil Statutes, Article 4413(29c), titled the Texas Driver and Traffic Safety Education Act, into the Texas Education Code (TEC), Chapter 1001.

Texas Civil Statutes, Article 4413(29c), the Texas Driver and Traffic Safety Education Act, was codified by the 78th Texas Legislature, 2003, as Texas Education Code, Title 5, Chapter 1001. Also during 2003, there was a major reorganization of state government with a view toward streamlining regulatory processes and other governmental functions. In the course of reviewing aspects of the codification, it became apparent that a revision of 19 TAC Chapter 176 was necessary. Currently, rules in this

chapter are organized in the following subchapters: Subchapter AA, Commissioner's Rules on Minimum Standards for Operation of Licensed Texas Driver Education Schools; Subchapter BB, Commissioner's Rules on Minimum Standards for Operation of Licensed Texas Driving Safety Schools and Course Providers; Subchapter CC, Commissioner's Rules on Minimum Standards for Operation of Texas Drug and Alcohol Driving Awareness Programs; and Subchapter DD, Commissioner's Rules on Hearings Held Under the Texas Education Code, Chapter 1001. The revisions presented in this adoption impact Subchapters AA, BB, and DD.

Comments from the driver training industry, consumers, legislators, and other stakeholders contributed to the revision of 19 TAC Chapter 176, including the repeal and replacement of 19 TAC §176.1110 governing Alternative Delivery Methods of driving safety courses. Definitions were added to both Subchapters AA and BB to assist all parties in completely understanding certain terms used in the rules. In Subchapters AA, BB, and DD, references to Texas Civil Statutes, Article 4413(29c), were replaced with corresponding references to the Texas Education Code, Chapter 1001. A few references were not codified and those unchanged references now show the suffix "(Vernon's 2001)" to refer the reader to the prior version of the law. The decision not to codify non-operative language does not mean that the rule is no longer justified. Editorial changes to standardize language or correct grammar have been made throughout Subchapters AA and BB. These edits include changing reference to the division rather than the division director, as applicable, for clarification and changing reference to a driver's license rather than a driver license for consistency.

In order to correct references to newly codified statutory authority and to clarify and modify existing rule language, the following amendments to 19 TAC Chapter 176, Subchapter BB, are adopted.

The amendment to 19 TAC §176.1101 includes changes in paragraph (9)(A) to modify language to broaden the scope of prior felony convictions to be considered, in subparagraph (C) to shorten the length of time for consideration from ten years to seven, in subparagraph (D) to remove unnecessary language and add language to allow the division to consider prior similar violations, and in subparagraph (E) to clarify language. New subparagraph (G) was added to address applicants who have received deferred adjudication in prior criminal cases.

No changes were made to §176.1101 since published as proposed.

The amendment to 19 TAC §176.1102 modifies subsection (a) to correct a statutory citation. No changes were made to §176.1102 since published as proposed.

The amendment to 19 TAC §176.1103 modifies subsection (e)(1) to change from three working days to five working days for consistency. Subsection (e) also was modified by removing paragraph (3) and renumbering the following paragraph. In subsection (i), language in paragraph (1) was changed to delete the school requirement to notify the agency and program owner prior to school closure. Paragraph (2) was modified to clarify language.

No changes were made to §176.1103 since published as proposed.

The amendment to 19 TAC §176.1104 modifies subsection (h) to change the deadline from three days to five and in subsection

(k) from 15 days to five days for consistency. Subsection (k) was revised to delete an unnecessary statutory citation.

In response to public comment, §176.1104 was modified since published as proposed. As proposed, new subsection (l) would have added the requirement for course providers and facilities to be located in the United States. New subsection (l) was revised to clarify the requirement for course providers and facilities to be located in the United States while still allowing subsidiary offices abroad.

The amendment to 19 TAC §176.1105 modifies subsection (a) to add language that requires course providers to maintain a registered agent in Texas, clarifies instructor trainee, and deletes the requirement to notify TEA when an instructor leaves employment of the school. The proposal also revises subsection (d) to correct a statutory citation.

No changes were made to §176.1105 since published as proposed.

The amendment to 19 TAC §176.1107 modifies subsection (c)(1)(A) to change the requirement for driving safety instructor training to accommodate instructors already licensed. Also in subsection (c), the modification to paragraph (2)(A) makes similar accommodations for specialized driving safety instructors. The changes in paragraph (3)(A)(i) - (iii) reduce the hourly training requirements of instructors already licensed and clause (iv) was added to clarify driving safety course proof of authorship and initial course demonstration. Revisions in paragraphs (3)(B), (4)(B), (5)(B), and (6)(B) broaden language to include practical teaching and/or demonstrative presentation records. In addition, changes in paragraph (4)(A)(i) - (iii) reduce the hours of verifiable experience for a driving safety instructor trainer and clause (iv) was added to clarify specialized driving safety course proof of authorship and initial course demonstration. Modifications in paragraph (5)(A)(i) reduces the hours of teaching experience for driving safety instructor trainers and requires the trainer to demonstrate to the division director's designee the ability to teach. Revisions in paragraph (6)(A)(i) reduce the hours of verifiable experience for a specialized driving safety instructor trainer.

The amendment to 19 TAC §176.1107 also updates subsection (k) to cite a previous version of state law and the year, subsection (n)(1)(A) to correct the reference to Chapter 53 of the Texas Occupations Code, and subsection (n)(4) to correct a statutory citation.

No changes were made to §176.1107 since published as proposed.

The amendment to 19 TAC §176.1108 modifies subsection (a) to clarify who must submit changes to traditional driving safety courses and changes the language to clarify the revocation of approval of inactive courses. The changes in subsection (a)(1)(B)(v) clarify and correct grammar and in subsection (a)(1)(B)(vi) removes language to clarify what constitutes a student course guide. Other changes to the section also:

remove language in subsection (a)(1)(C)(v) to allow lunch periods to occur during the 60 minutes of breaks allowed;

delete subsection (a)(1)(C)(ix), removing the requirement for a short video to be shown during class;

revise renumbered subsection (a)(1)(C)(ix) to require sufficient accommodations for all students and renumber the following clause;



change language in subsection (a)(1)(D) to require that courses must assure students master curriculum points delineated;

add new language in subsection (a)(1)(D)(i)(V) that requires TEA-provided information on course content;

add requirements in subsection (a)(1)(D)(iii) to subclause (I) to include aggressive driving and subclause (III) to add drowsy driving;

add new language in subsection (a)(1)(D)(x)(VI) that requires courses to address dangers involved in locking or leaving children in vehicles unattended;

add a requirement in subsection (a)(1)(D)(xi) that courses not address methods to drink and drive and remove subclause (V) regarding countermeasures;

remove a requirement in subsection (a)(1)(D)(xii) for a summation and change the final examination time to a minimum of five minutes rather than 15 minutes;

modify subsection (a)(1)(D)(xiii) to change the remaining allocated course time from 20 to 30 minutes;

update subsection (a)(1)(H) to correct a statutory citation;

add a new subsection (a)(1)(J) to specify requirements for renewal every two years of driving safety courses;

modify subsection (a)(2)(A) to clarify the completion of instructor training hours if alternative training does not apply;

modify subsections (a)(3)(A)(ii)(VI) and (a)(3)(A)(iii)(I) and (III) to clarify language regarding continuing education programs;

change subsection (a)(3)(B) to increase the amount of time for course providers to notify TEA of continuing education courses;

revise subsection (c) to change the deadline for notification from 72 hours to five days for discontinued courses;

modify subsection (e)(1) to broaden the context of falsification in applications;

update subsection (e)(3) to correct a statutory citation; and

change language in subsection (e)(4) to correct the citation for location of the educational objectives.

No changes were made to §176.1108 since published as proposed.

The amendment to 19 TAC §176.1109 modifies subsection (a)(1)(B)(v) to clarify language regarding audio/video material and revises clause (vi) to delete unnecessary language. Other changes to the section also:

revise subsection (a)(1)(C)(v) to allow the lunch period to occur during the 60 minutes of breaks required;

change subsection (a)(1)(C)(ix) to require sufficient accommodations for all students;

modify subsection (a)(1)(D) to require that specialized courses contain four hours of child passenger safety seat systems, seat belts, etc. and must assure students' mastery;

add new language in subsection (a)(1)(D)(viii)(VIII) that requires courses to address dangers involved in locking or leaving children in vehicles unattended;

revise subsection (a)(1)(D)(ix) to remove the requirement for a summation and set the final examination time to a minimum of five minutes rather than 15 minutes;

revise subsection (a)(1)(D)(x) to increase the time allowed for other topics in the course from 20 to 30 minutes;

update subsection (a)(1)(H) to correct a statutory citation;

modify subsection (a)(2)(A) to clarify the completion of instructor training hours if alternative training does not apply;

change subsection (a)(3)(B) to change the amount of time for course providers to notify TEA of continuing education courses;

revise subsection (c) to change the deadline for notification from 72 hours to five days for discontinued courses;

modify subsection (e)(1) to broaden the context of falsification in applications;

update subsection (e)(3) to correct a statutory citation; and

change language in subsection (e)(4) to correct the reference citation for educational objectives.

No changes were made to §176.1109 since published as proposed.

Section 176.1110 was repealed and replaced with a newly adopted section that sets out the requirements for driving safety course Alternative Delivery Methods (ADMs). Included in the new language are provisions for allowing different methods for demonstrating student mastery, comprehension, and participation in the curriculum and a new requirement that written material in ADMs that is read by the student must provide enough content (by word count) to equal the equivalent of a 180-word-per-minute reading rate. Extensive language was added to control modifications to an ADM while allowing the course provider to make certain changes that are insignificant or in the public interest with minimal review by TEA. The new section requires that ADM approval be renewed every two years beginning on March 1, 2006.

In addition, a technical edit was made to §176.1110 after published as proposed. Subsection (d)(3) was modified to correct reference to the 10 required topics in §176.1108(a)(1)(D).

The amendment to 19 TAC §176.1111 modifies subsection (b)(16) to clarify that the student must be informed of the course provider's security and privacy policy. The modification in subsection (c)(2) adds course providers to the list of entities prohibited from improperly issuing certificates.

No changes were made to §176.1111 since published as proposed.

The amendment to 19 TAC §176.1112 updates subsections (a), (c), and (d) to correct statutory citations. No changes were made to §176.1112 since published as proposed.

The amendment to 19 TAC §176.1113 removes unnecessary language from subsection (d). No changes were made to §176.1113 since published as proposed.

The amendment to 19 TAC §176.1116 modifies subsection (a) to add domain names to the types of names that may not be used by a licensee, remove unnecessary language, and specify that ADMs must also adhere to name and advertising requirements. The revision in subsection (b) removes unnecessary language and in subsection (c) adds course providers to the responsible parties that may be required to substantiate advertising claims and publish retractions.

No changes were made to §176.1116 since published as proposed.

The amendment to 19 TAC §176.1117 updates subsections (a)(1), (a)(10), and (c)(4) to correct statutory citations and revises subsection (a)(9) to change language from two business days to five business days for a course provider to report all unaccounted certificates.

No changes were made to §176.1117 since published as proposed.

The amendment to 19 TAC §176.1118 updates subsections (a) and (d) to correct statutory citations. No changes were made to §176.1118 since published as proposed.

Following is a summary of public comments received and corresponding agency responses regarding the proposed revisions to 19 TAC Chapter 176, Subchapter BB.

**Comment.** An individual expressed opposition to the proposed revisions if any changes would in any way restrict a parent's right to teach their children to drive responsibly.

**Agency response.** The agency disagrees. The proposed revisions to 19 TAC Chapter 176 do not affect a parent's right to teach their child to drive. That program, the parent-taught program of driver education, is administered by the Texas Department of Public Safety and is beyond the scope of these rules.

**Comment.** An individual commented that they cannot increase the amount they charge for a driving safety course because of competitive pressure and suggested that the minimum cost of a course be increased to \$35 per student.

**Agency response.** The agency disagrees. The \$25 minimum fee for a driving safety course is set in law and a change in the minimum cost would require legislative action. The fee cannot be increased solely by a change in rule.

**Comment.** An individual noted that new course material will be developed and requested that the new material be made available sooner.

**Agency response.** The agency disagrees. The agency division responsible for driver training regulates curriculum but does not provide the new course material. New material for classes is the responsibility of the course provider who owns the curriculum; rules do require that this material be updated from time to time. The commenter was referred to the appropriate course provider.

**Comment.** An individual expressed criticism of the manner in which the proposal was presented on the web page and suggested that the format for posting be changed so that rules are summarized in two paragraphs and that any documents referred to in the posting are also summarized.

**Agency response.** The agency disagrees. The agency adheres to Government Code requirements for making available explanatory information through the Internet, including presenting the text of its rules.

**Comment.** Regarding §176.1101(9), the National Safety Council commented that the term "successfully demonstrates" is vague and open to interpretation.

**Agency response.** The agency disagrees. The agency believes that the term can be clearly understood by all parties and requires minimal interpretation without further rule revision.

**Comment.** Regarding §176.1103(i)(1), the National Safety Council requested clarification of the meaning of "all records" that must be forwarded to the course provider by a school that is closing.

**Agency response.** The agency disagrees. The term "all records" is clear in this context because the commissioner's rules regulate all the records kept by a driver training school that identify and track the activity of students and industry members involved in student activity.

**Comment.** Regarding §176.1104(l), the National Safety Council suggested that the requirement that "course providers and all course provider facilities must be located within the United States" is unnecessarily restrictive and prevents a course provider from maintaining a subsidiary office abroad.

**Agency response.** The agency agrees. Section 176.1104(l) was modified accordingly to clarify the requirement for course providers and facilities to be located in the United States while still allowing subsidiary offices abroad.

**Comment.** Regarding §176.1108(a)(C)(ix), previously clause (x), the National Safety Council thanked the agency for maintaining a size limit for driving safety classes.

**Agency response.** No response required.

**Comment.** The National Safety Council commented that the director of the driver training division should have the authority to approve a structured program that contains all of the required elements but for which the topic timing is slightly different.

**Agency response.** The agency agrees; this comment requires no modification to the proposal. The director of driver training currently has the authority to approve such programs, but none have been submitted. Timing for each individual topic may be adjusted as the course author sees fit; however, the minimum time for each unit is set as a requirement in rule. The division may approve courses that exceed the minimum times, but may not approve times that are less than the minimum.

#### **19 TAC §§176.1101 - 176.1105, 176.1107 - 176.1113, 176.1116 - 176.1118**

The amendments and new rule are adopted under the Texas Education Code, §1001.052, which authorizes the agency to adopt and administer comprehensive rules governing driving safety courses, and §1001.053, which authorizes the commissioner of education to adopt and enforce rules necessary to administer driver and traffic safety education and to ensure the integrity of approved driving safety courses and to enhance program quality.

The amendments and new rule implement the Texas Education Code, §§1001.051 - 1001.053.

#### **§176.1104. Course Provider Licensure.**

(a) Application for course provider. An application for a license for a course provider shall be made on forms supplied by the Texas Education Agency (TEA). An application from a course provider that is a primary consignee shall include evidence of permission from the course owner to operate as the primary consignee.

(b) Bond requirements for course provider. In the case of an original or a change of owner application, an original bond shall be provided. In the case of a renewal application, an original bond or a continuation agreement for the approved bond currently on file shall be submitted. The bond or the continuation agreement shall be executed on the form provided by TEA. Posting of a \$25,000 bond shall satisfy the requirements for financial stability for a course provider.

(c) Course provider license. The course provider license shall indicate the name of the driving safety course for which approval is granted exactly as stated in the application for the course approval.

(d) Verification of ownership for course provider.

(1) In the case of an original or change of owner application for a course provider, the owner of the course provider shall provide verification of ownership that includes, but is not limited to, copies of stock certificates, partnership agreements, and assumed name registrations. The division may require additional evidence to verify ownership.

(2) With the renewal application, the owner of the course provider shall provide verification that no change in ownership has occurred. The division may require additional evidence to verify that no change of ownership has occurred.

(e) Adequate educational and experience qualifications. The course provider shall provide as part of the application sufficient documentation to support adequate educational and experience qualifications in order to carry out the responsibilities of a course provider. Verifiable education and/or experience in administration and/or supervision shall be required. Adequate educational and experience qualifications have been satisfied if the course provider meets one of the following.

(1) A course provider who has owned or been a primary consignee of an approved driving safety course and has been fully operational as a course provider in the State of Texas for a continuous 12-month period before September 1, 1995, satisfies the educational and experience qualifications.

(2) A course provider who has an approved driving safety course but has not been fully operational as a course provider for a continuous 12-month period must submit evidence of at least one year of experience in administration and/or supervision.

(3) A new course provider shall submit evidence of:

(A) at least 30 semester credit hours of education from an accredited postsecondary institution and two years of paid experience in administration and/or supervision; or

(B) a combined total of three years of driver and traffic safety education or experience and administrative/management experience; however, a minimum of six months in each shall be required.

(f) Effective date of the course provider license. The effective date of the course provider license shall be the date the license is issued. Exceptions may be made if the applicant was in full compliance on the effective date of issue.

(g) Purchase of course provider.

(1) A person or persons purchasing a licensed course provider shall obtain an original license. The application for a new course provider that is a primary consignee shall include evidence of permission from the course owner to operate as the primary consignee.

(2) In addition, copies of the executed sales contracts, bills of sale, deeds, and all other instruments necessary to transfer ownership of the course provider shall be submitted to TEA. The contract or any instrument transferring the ownership of the course provider shall include the following statements.

(A) The purchaser shall assume all refund liabilities incurred by the seller or any former owner before the transfer of ownership.

(B) The sale of the course provider shall be subject to approval by TEA.

(C) The purchaser shall assume the liabilities, duties, and obligations under the enrollment contracts between the students and the seller, or any former owner.

(3) A change of ownership of a course provider is considered substantially similar:

(A) in the case of ownership by an individual, when the individual transfers ownership to a corporation in which the individual owns 100% of the stock of the corporation;

(B) in the case of ownership by a corporation, when the ownership is transferred to a partnership in which the stockholders possess equal interest in the owning partnership; or

(C) in the case of ownership by a partnership or a corporation that transfers ownership to a corporation in which the partners hold interest that equals the interest of the owning partnership, or the owning corporation transfers ownership to a different corporation in which the stockholders for both corporations possess equal shares.

(4) In the event a change of ownership is substantially similar, the applicant pays a change in ownership fee as opposed to an initial application fee.

(h) New location.

(1) The division shall be notified in writing of any change of address of a course provider at least five working days before the move.

(2) The course provider must submit the appropriate fee and all documents designated by the division as being necessary. A course provider license may be issued after the complete required documents are approved.

(i) Renewal of course provider license. A complete application for the renewal of a license for a course provider shall be submitted before the expiration of the license and shall include the following:

(1) completed application for renewal;

(2) annual renewal fee, if applicable;

(3) a revised continuing education course for the next year;

(4) executed bond or executed continuation agreement for the bond currently approved by, and on file with, TEA; and

(5) any other revision or evidence of which the course provider has been notified in writing that is necessary to bring the course provider's application for a renewal license to a current and accurate status.

(j) Notification of legal action. A course provider shall notify the division in writing of any legal action that is filed against the course provider, its officers, any owner, or any school instructor that might concern the operation of the course provider within five working days after the course provider becomes aware of the fact that the legal action has commenced or the legal process has been served. Included with the written notification, the course provider shall submit a file-marked copy of the petition or complaint that has been filed with the court.

(k) Course provider closure. A course provider owner shall notify TEA at least five business days before the course provider closure. The course provider shall provide written notice of the actual discontinuance of the operation the day of cessation of business. A course provider shall make all records available for review to TEA within 30 days of the date the course provider ceases operation.

(l) Course providers and all course provider facilities that process, deliver, or store curriculum materials, student records, or uniform certificates of course completion for Texas courses must be located within the United States.

*§176.1110. Alternative Delivery Methods of Driving Safety Instruction.*

(a) Approval process. The commissioner of education may approve an alternative delivery method (ADM) that delivers an approved driving safety course or an approved specialized driving course and meets the following requirements.

(1) Standards for approval. The commissioner of education may approve an ADM for an approved driving safety course or a specialized driving safety course and waive any rules to accomplish this approval if the ADM delivers an approved course in a manner that is at least as secure as a traditional classroom. ADMs that meet the requirements outlined in subsections (b) - (h) of this section shall receive ADM approval.

(2) Application. The course provider shall submit a completed ADM application along with the appropriate fee. The application for ADM approval shall be treated the same as an application for the approval of a new course and the ADM must deliver the course provider's approved curriculum as delineated in the course content guide required by §176.1108(a)(1)(B) of this title (relating to Driving Safety Courses of Instruction).

(3) Incomplete applications. An application that is incomplete may be returned to the applicant along with the application fee.

(4) School license required. A person or entity offering a driving safety course or a specialized driving course to Texas students by an alternative delivery method must hold a driving safety school license. The driving safety school is responsible for the operation of the ADM.

(5) Course provider endorsement required. The driving safety school must have an endorsement from a licensed course provider.

(b) Course content. The ADM must deliver the same topics and course content as the approved course.

(1) Course topics. The time requirements for each unit and the course as a whole described in §176.1108(a)(1)(C) and (D) of this title and §176.1109(a)(1)(C) and (D) of this title (relating to Specialized Driving Safety Courses of Instruction) shall be met.

(2) Topic sequence. The ADM sequencing may be different from the approved traditional course as long as the sequencing does not detract from educational value of the course. The ADM owner shall provide a key showing the topic sequence of the traditional course and where the corresponding information appears in the ADM.

(3) Editing. The material presented in the ADM shall be edited for grammar, punctuation, and spelling and be of such quality that it does not detract from the subject matter.

(4) Irrelevant material. Advertisement of goods and services shall not appear during the actual instructional times of the course. Distracting material that is not related to the topic being presented shall not appear during the actual instructional times of the course.

(5) Minimum content. The ADM shall present sufficient content so that it would take a student 300 minutes to complete the course. In order to demonstrate that the ADM contains sufficient content, the ADM shall use the following methods.

(A) Word count. For written material that is read by the student, the course provider shall count the total number of words in the written sections of the course. This word count shall be divided by 180, the average number of words that a typical student reads per minute. The result is the time associated with the written material for the sections.

(B) Multimedia presentations. For multimedia presentation, the course provider shall calculate the total amount of time it takes for all multimedia presentations to play.

(C) Charts and graphs. The ADM may assign one minute for each chart or graph.

(D) Examinations. The course provider may allocate up to 90 seconds for questions presented over the Internet and 30 seconds for questions presented by telephone.

(E) Total time calculation. If the sum of the time associated with the written course material, the total amount of time for all multimedia presentations, and the time associated with all charts and graphs equals or exceeds 300 minutes, the ADM has demonstrated the required amount of content.

(F) Alternate time calculation method. In lieu of the time calculation method, the ADM may submit alternate methodology to demonstrate that the ADM meets the 300-minute requirement.

(6) Student breaks. A course that demonstrates that it contains 300 minutes of instructional content shall mandate that students take 60 minutes of break time or provide additional educational content for a total of 360 minutes.

(c) Personal validation. The ADM shall maintain a system to validate the identity of the person taking the course. The personal validation system shall incorporate the following requirements.

(1) Personal validation questions. The ADM shall ask a minimum of 10 personal validation questions throughout the course.

(2) Third party data sources. The personal validation questions shall be drawn equally from at least two different databases.

(3) Time to respond. The student must correctly answer the personal validation question within 90 seconds for questions presented over the Internet and 30 seconds for questions presented by telephone.

(4) Placement of questions. At least one personal validation question shall appear in each major unit or section, not including the final examination.

(5) Exclusion from the course. The ADM shall exclude the student from the course after the student has incorrectly answered more than 30 percent of the personal validation questions.

(6) Correction of answer. The school may correct an answer to a personal validation question for a student who inadvertently missed a personal validation question. In such a case, the student record shall include a record of both answers and an explanation of the reasons that the school corrected the answer.

(7) Student affidavits. A student for whom third-party database information is available from fewer than two databases (for example, a student with an out-of-state driver's license) may be issued a uniform certificate of completion upon presentation to the course provider of a notarized copy of the student's driver's license or equivalent type of photo identification and a statement from the student certifying that the individual attended and successfully completed the six-hour driving safety or specialized driving safety course for which the certificate is being issued and for which there exists a corresponding student record.

(8) Alternative methods. Upon approval by the Texas Education Agency (TEA), the ADM may use alternate methods that are at least as secure as the personal validation question method.

(d) Content validation. The ADM shall incorporate a course content validation process that verifies student participation and comprehension of course material, including the following.

(1) Timers. The ADM shall include built-in timers to ensure that 300 minutes of instruction have been attended and completed by the student.

(2) Testing the student's participation in multimedia presentations. The ADM shall ask at least one course validation question following each multimedia clip of more than 60 seconds.

(A) Test bank. For each multimedia presentation that exceeds 60 seconds, the ADM shall have a test bank of at least four questions.

(B) Question difficulty. The question shall be short answer, multiple choice, essay, or a combination of these forms. The question shall be difficult enough that the answer may not be easily determined without having viewed the actual multimedia clip.

(C) Failure criteria. If the student fails to answer the question correctly, the ADM shall either require the student view the multimedia clip again or the ADM shall fail the student from the course. If the ADM requires the student to view the multimedia clip again, the ADM shall present a different question from its test bank for that multimedia clip. The ADM may not repeat a question until it has asked all the questions from its test bank.

(D) Answer identification. The ADM shall not identify the correct answer to the multimedia question.

(3) Mastery of course content. The ADM shall test the student's mastery of the course content by asking at least two questions from each of the ten topics listed in §176.1108(a)(1)(D) of this title.

(A) Test bank. The test bank for course content mastery questions shall include at least ten questions from each of the ten topics identified in §176.1108(a)(1)(D) of this title.

(B) Placement of questions. The mastery of course content questions shall be asked either at the end of the major unit or section in which the topic identified in §176.1108(a)(1)(D) of this title is covered (unit examination) or at the end of the course (comprehensive final examination).

(C) Question difficulty. Course content mastery questions shall be short answer, multiple choice, essay, or a combination of these forms, and of such difficulty that the answer may not be easily determined without having participated in the actual instruction.

(4) Repeat and re-test options. The ADM may use either of the following options for students who fail an examination to show mastery of course content, but may not use both in the same ADM.

(A) Repeat the failed unit. If the student misses more than 30% of the questions asked on an examination, the ADM shall require that the student go back and take the unit again. All timers shall be reset. The correct answer to missed questions may not be disclosed to the student (except as part of course content). At the end of the unit, the ADM shall again test the student's mastery of the material. The ADM shall present different questions from its test bank until all the applicable questions have been asked. The student may repeat this procedure an unlimited number of times.

(B) Re-test the student. If the student misses more than 30% of the questions asked on an exam, the ADM shall retest the student in the same manner as the failed examination, using different questions from its test bank. The student is not required to repeat the failed unit, but may be allowed to do so prior to retaking the exam. If the student fails the same unit examination or the comprehensive final examination three times, the student shall fail the course.

(e) Student records. The ADM shall provide for the creation and maintenance of the records documenting student enrollment, the verification of the student's identity, and the testing of the student's mastery of the course material. The student records shall contain the following information.

(1) The student's name and driver's license number.

(2) A record of which personal validation questions were asked and the student's responses.

(3) A record of which multimedia participation questions were asked and the student's responses.

(4) The name or identity number of the staff member entering comments, retesting, or revalidating the student.

(5) If any answer to a question is changed by the school or course provider for a student who inadvertently missed a question, the school or course provider shall provide both answers and a reasonable explanation for the change.

(6) A record of the course content mastery questions asked and the answers given.

(7) A record of the time the student spent in each unit of the ADM and the total instructional time the student spent in the course.

(8) The school shall also ensure that the student record is readily, securely, and reliably available for inspection by TEA or a TEA-authorized representative.

(f) Additional requirements for Internet courses. Courses delivered via the Internet shall also comply with the following requirements.

(1) Re-entry into the course. An ADM may allow the student re-entry into the course by username and password authentication or other means that are as secure as username and password authentication.

(2) Navigation. The student shall be able to logically navigate through the course. The student shall be allowed to freely browse previously completed material.

(3) Audio-visual standards. The video and audio shall be clear and, when applicable, the video and audio shall be synchronized.

(4) Video transcripts. If the ADM presents transcripts of a video presentation, the transcript shall be delivered concurrently with the video stream so that the transcript cannot be displayed if the video does not display on the student's computer.

(5) Domain names. Each school offering an ADM must offer that ADM from a single domain. The ADM may accept students that are redirected to the ADM's domain, as long as the student is redirected to a web page that clearly identifies the course provider and school offering the ADM before the student begins the registration process, supplies any information, or pays for the course. Subdomains of the ADM's single domain may also accept students as long as the subdomain is registered to and hosted by the ADM and clearly identifies the official course provider, school name, and TEA registration number.

(g) Additional requirements for video courses.

(1) Delivery of the material. For ADMs delivered by the use of videotape, digital video disc (DVD), film, or similar media, the equipment and course materials may only be made available through a process that is approved by TEA.

(2) Video requirement. In order to meet the video requirement of §176.1108(a)(1)(B)(v) of this title, the video course may include between 60 and 150 minutes of video that is relevant to the required topics such as video produced by other entities for training purposes, including public safety announcements and B roll footage. The remainder of the 300 minutes of required instruction shall be video material that is relevant to one of the 11 required topics and produced by the ADM owner, course owner, or course provider specifically for the ADM.

(A) A video ADM shall ask, at a minimum, at least one course validation question for each multimedia clip of more than 60 seconds at the end of each major segment (chapter) of the ADM.

(B) A video ADM shall devise and submit for approval a method for ensuring that a student correctly answers questions concerning the multimedia clips of more than 60 seconds presented during the ADM.

(h) Standards for ADMs using new technology. For ADMs delivered using technologies that have not been previously reviewed and approved by TEA, TEA may apply similar standards as appropriate and may also require additional standards. These standards shall be designed to ensure that the course can be taught by the alternative method and that the alternative method includes testing and security measures that are at least as secure as the methods available in the traditional classroom setting.

(i) Modifications to the ADM. Except as provided by paragraph (1) of this subsection, a change to a previously approved ADM shall not be made without the prior approval of TEA. The licensed course provider for the approved course on which the ADM is based shall ensure that any modification to the ADM is implemented by all schools endorsed to offer the ADM.

(1) A course provider may submit to the TEA a request for immediate implementation of a proposed change that is insignificant or that protects the interest of the consumer such that immediate implementation is warranted. The request shall include:

(A) a complete description of the proposed change;

(B) the reason for the change;

(C) the reason the requestor believes the proposed change is insignificant or protects the interest of the consumer such that immediate implementation is warranted; and

(D) an explanation of how the change will maintain the course or ADM in compliance with state law and the rules specified in this chapter.

(2) The TEA may request additional information regarding a proposed change from the course provider making a request under paragraph (1) of this subsection.

(3) The TEA will respond to any request made under paragraph (1) of this subsection within five working days of receipt.

(A) If the TEA determines that the proposed change is insignificant or protects the interest of the consumer such that immediate implementation is warranted, the requestor may immediately implement the change. The licensed course provider for the approved course on which the ADM is based shall ensure that the change is implemented by all schools endorsed to offer the ADM.

(B) If the TEA determines that the proposed change is neither insignificant nor protects the interest of the consumer such that immediate implementation is warranted, the TEA shall notify the requestor of that determination and the change may not be made unless the TEA approves the change following a complete review.

(4) A determination by the TEA to allow immediate implementation under paragraph (1) of this subsection does not constitute final approval by the TEA of the change. The TEA reserves the right to conduct further review after the change is implemented and to grant or deny final approval based on whether the change complies with state law and rules specified in this chapter.

(5) If, following further review, a change in an ADM that has been immediately implemented pursuant to paragraph (1) of this subsection is determined not to be in compliance with state law and rules specified in this chapter, the TEA:

(A) shall notify the course provider affected by the change of:

(i) the specific provisions of state law or rules with which the ADM change is not in compliance; and

(ii) a reasonable date by which the ADM must be brought into compliance;

(B) shall require the course provider to notify any school endorsed by the course provider of the finding;

(C) shall not, for the period between the implementation of the change and the date specified under subparagraph (A)(ii) of this paragraph:

(i) seek any penalty relating to the non-compliance;

(ii) take any action to revoke or deny renewal of a license of a school or course provider based on the change; or

(iii) withdraw approval of a course or ADM based on the change; and

(D) is not required to specify the method or manner by which the course provider alters the ADM to come into compliance with state law and the rules in this chapter.

(6) If the TEA allows immediate implementation pursuant to paragraph (1) of this subsection and later determines that the description of the change or the request was misleading, materially inaccurate, not substantially complete, or not made in good faith, paragraph (5)(C) of this subsection does not apply.

(7) A course provider who immediately implements a change pursuant to paragraph (1) of this subsection and fails to bring the ADM into compliance prior to the date allowed under paragraph (5)(A)(ii) of this subsection may be determined to be in violation of state law or the rules in this chapter after that date.

(8) A course provider that immediately implements a change under paragraph (1) of this subsection assumes the risk of final approval being denied and of being required to come into compliance with state law and the rules in Chapter 176 prior to the date allowed under paragraph (5)(A)(ii) of this subsection, including bearing the cost of reversing the change or otherwise modifying the ADM to come into compliance with state law and the rules in this chapter.

(j) Termination of the school's operation. Upon termination, schools shall deliver any missing student data to TEA within five days of termination.

(k) Renewal of ADM approval. The ADM approval must be renewed every two years. The renewal document due date shall be March 1, 2006, and every two years thereafter.

(1) For approval, the course provider shall:

(A) update all the statistical data and references to law with the latest available data; and

(B) submit a statement of assurance saying that the ADM has been updated to reflect the latest applicable laws and statistics.

(2) Failure to make necessary changes or to submit a statement of assurance documenting those changes shall be cause for revocation of the ADM approval.

(3) The commissioner may alter the due date of the renewal documents by giving the approved ADM six months' notice. The commissioner may alter the due date in order to ensure that the ADM is updated six months after the effective date of new state laws passed by the Texas Legislature.

(l) Access to instructor. With the exception of circumstances beyond the control of the school, the student shall have adequate access (on the average, within two minutes) to both a licensed instructor and telephonic technical assistance (help desk) throughout the course such that the flow of instructional information is not delayed.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 1, 2005.

TRD-200501379

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

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Proposal publication date: January 21, 2005

For further information, please call: (512) 475-1497



## 19 TAC §176.1110

The repeal is adopted under the Texas Education Code, §1001.052, which authorizes the agency to adopt and administer comprehensive rules governing driving safety courses, and §1001.053, which authorizes the commissioner of education to adopt and enforce rules necessary to administer driver and traffic safety education and to ensure the integrity of approved driving safety courses and to enhance program quality.

The repeal implements the Texas Education Code, §§1001.051 - 1001.053.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER DD. COMMISSIONER'S RULES ON HEARINGS HELD UNDER THE TEXAS EDUCATION CODE, CHAPTER 1001

## 19 TAC §176.1301

The Texas Education Agency (TEA) adopts an amendment to §176.1301, concerning driver training schools. The amendment to §176.1301 is adopted without changes to the proposed text as published in the January 21, 2005, issue of the *Texas Register* (30 TexReg 265) and will not be republished. The section establishes provisions for hearings held under the Texas Education Code, Chapter 1001. The adopted amendment provides clarifications and reflect the codification of Vernon's Texas Civil Statutes, Article 4413(29c), titled the Texas Driver and Traffic Safety Education Act, into the Texas Education Code (TEC), Chapter 1001.

Texas Civil Statutes, Article 4413(29c), the Texas Driver and Traffic Safety Education Act, was codified by the 78th Texas Legislature, 2003, as Texas Education Code, Title 5, Chapter 1001. Also during 2003, there was a major reorganization of state government with a view toward streamlining regulatory processes and other governmental functions. In the course of reviewing aspects of the codification, it became apparent that a revision of 19 TAC Chapter 176 was necessary. Currently, rules in this chapter are organized in the following subchapters: Subchapter AA, Commissioner's Rules on Minimum Standards for Operation of Licensed Texas Driver Education Schools; Subchapter BB, Commissioner's Rules on Minimum Standards for Operation of Licensed Texas Driving Safety Schools and Course Providers; Subchapter CC, Commissioner's Rules on Minimum Standards for Operation of Texas Drug and Alcohol Driving Awareness Programs; and Subchapter DD, Commissioner's Rules on Hearings Held Under the Texas Education Code, Chapter 1001. The revisions presented in this adoption impact Subchapters AA, BB, and DD.

Comments from the driver training industry, consumers, legislators, and other stakeholders contributed to the revision of 19 TAC Chapter 176. In Subchapters AA, BB, and DD, references to Texas Civil Statutes, Article 4413(29c), were replaced with corresponding references to the Texas Education Code, Chapter 1001. A few references were not codified and those unchanged references now show the suffix "(Vernon's 2001)" to refer the reader to the prior version of the law. The decision not to codify non-operative language does not mean that the rule is no longer justified. Changes in Subchapter DD include clarification of time-line requirements.

In order to correct references to newly codified statutory authority and to clarify and modify existing rule language, the following amendments to 19 TAC Chapter 176, Subchapter DD, are adopted.

The title of the subchapter changes to Commissioner's Rules on Hearings Held Under the Texas Education Code, Chapter 1001.

The amendment to 19 TAC §176.1301 updates subsections (a), (b)(1)(B), (b)(2), (b)(3), (b)(4), (d)(4), and (g)(1) to correct statutory citations; removes subsection (b)(7) to delete the definition of the Texas Driver and Traffic Safety Education Act, a statute that was codified; modifies subsection (d)(1) to clarify the deadline for submission of a written request for a hearing to be 15 calendar days and that the postmark on the envelope would be the submittal date; and modifies subsection (d)(3) to clarify the hearing date is to be held within 30 calendar days.

The amendment to 19 TAC §176.1301 also modifies subsections (g)(2) and (j)(2) to change days to calendar days for consistency, makes an editorial change in subsection (h)(2); and revises subsection (h)(6) to reflect a date change.

No changes were made to §176.1301 since published as proposed.

Following is a summary of public comments received and corresponding agency responses regarding the proposed revisions to 19 TAC Chapter 176, Subchapter DD.

**Comment.** An individual expressed opposition to the proposed revisions if any changes would in any way restrict a parent's right to teach their children to drive responsibly.

**Agency response.** The agency disagrees. The proposed revisions to 19 TAC Chapter 176 do not affect a parent's right to teach their child to drive. That program, the parent-taught program of driver education, is administered by the Texas Department of Public Safety and is beyond the scope of these rules.

**Comment.** An individual expressed criticism of the manner in which the proposal was presented on the web page and suggested that the format for posting be changed so that rules are summarized in two paragraphs and that any documents referred to in the posting are also summarized.

**Agency response.** The agency disagrees. The agency adheres to Government Code requirements for making available explanatory information through the Internet, including presenting the text of its rules.

The amendment is adopted under the Texas Education Code, §1001.052, which authorizes the agency to adopt and administer comprehensive rules governing driving safety courses, and §1001.053, which authorizes the commissioner of education to adopt and enforce rules necessary to administer driver and traffic safety education and to ensure the integrity of approved driving safety courses and to enhance program quality.

The amendment implements the Texas Education Code, §§1001.051 - 1001.053.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

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## **TITLE 28. INSURANCE**

### **PART 1. TEXAS DEPARTMENT OF INSURANCE**

#### **CHAPTER 5. PROPERTY AND CASUALTY INSURANCE**

##### **SUBCHAPTER W. CONSUMER PROTECTION REQUIREMENTS CONSUMER BILL OF RIGHTS**

###### **28 TAC §5.9970**

The Commissioner of Insurance adopts new Subchapter W, §5.9970, concerning the Consumer Bill of Rights Personal Automobile Insurance (BRPA) and the Consumer Bill of Rights Homeowners, Dwelling and Renters Insurance (BRHO). The section is adopted with changes to the proposed text as published in the October 22, 2004, issue of the *Texas Register* (29 TexReg 9810).

The department received petitions from the Office of Public Insurance Counsel (OPIC), requesting the adoption of a revised BRPA and a revised BRHO. Article 1.35A, Sec. 5(b)(8), Insurance Code, provides that the Public Counsel for OPIC "shall submit to the department for adoption a consumer bill of rights appropriate to each personal line of insurance regulated by the department to be distributed upon the issuance of a policy by insurers to each policyholder under rules adopted by the department."

As a result of legislative changes, specifically the enactment of Senate Bill (SB) 14 by the 78th Legislature, the commissioner adopts new §5.9970, which adopts the BRPA and the BRHO, in English and Spanish, and sets forth the responsibility and obligation of insurers to provide copies of these Bills of Rights to insureds. Based on changes to regulatory provisions brought about by SB 14, the new rule provides a more efficient method of requiring that the Bills of Rights be provided to each policyholder for each personal line of insurance regulated by the department. Since the last adoption of the Bills of Rights in 2002, (Commissioner's Order No. 02-0507), SB 14 and departmental actions have resulted in changes affecting both policyholders and insurers. It is necessary to adopt the 2005 version of the Bills of Rights so that insurers will be distributing to current and future policyholders the appropriate information informing them of their rights.

The department has made the following changes to the Bills of Rights as proposed: The department has resolved the formatting errors in the Bills of Rights and deleted the information box containing OPIC contact information on the last page of the Bills of Rights. More precise statutory language was incorporated where appropriate and the footer was changed to reflect the 2005 publication date. Language in the RIGHT TO PRIVACY and the section regarding the USE OF CREDIT INFORMATION in both Bills of Rights was condensed. The last sentence in the NOTICE OF CHANGE IN COVERAGE was deleted and the title and first sentence were changed. The version year was changed from 2004 to 2005.

New §5.9970 adopts the 2005 versions of the BRPA and the BRHO, in English and Spanish. The section defines "insurer" and sets forth the responsibility and obligation of insurers to provide copies of the Bills of Rights to insureds. The 2005 versions of the Bills of Rights contain the information previously provided to insureds as well as reflect legislative acts and departmental actions concerning the use of credit information; repeal of statutory discounts; information regarding rate differentials within a county; the use of water claims, previous mold damage or mold damage claims, and appliance-related claims in underwriting; information concerning right to privacy; notices regarding premium increases and reduced coverage; and information concerning the use of underwriting guidelines. The documents provide accurate, simplified, and clarified language.

In response to comments regarding the BRPA, the department updated the footer; condensed the RIGHT TO PRIVACY; condensed the CREDIT RIGHT; renumbered the individual rights under CREDIT RIGHT; and removed the OPIC information box



at the end of both Bills of Rights. In response to comments regarding the BRHO, the department updated the footer; in APPLIANCE CLAIMS, the department changed the title to APPLIANCE RELATED WATER DAMAGE CLAIMS; added "water damage" to the first sentence in right number six; condensed RIGHT TO PRIVACY; the department added "water damage" to the fourth bullet under USE OF CLAIMS HISTORY TO NONRENEW; the department revised the title to read NOTICE OF CHANGE IN POLICY FORM from NOTICE OF CHANGE IN COVERAGE; the department condensed CREDIT RIGHT; and renumbered the rights following CREDIT RIGHT.

Comment: One commenter stated that Article 1.35A Section 5(b)(8) of the Texas Insurance Code authorizes promulgation of a rule that Bills of Rights be distributed upon "issuance" of a policy by insurers. The commenter states that the statute does not authorize a rule requiring insurers to furnish revised Bills of Rights to existing insureds upon renewal of their policies.

Agency Response: The department disagrees with the comments regarding statutory authority. Insurance Code Article 1.35A, Section (5)(b)(8) requires the department to adopt rules for Bills of Rights appropriate to each personal line of insurance regulated by the department to be distributed upon the issuance of a policy by insurers to each policyholder which would include the issuance of a renewal policy to an existing policyholder. To accept the commenters' interpretation of this authority would mean that any updates to the Bills of Rights would not reach renewing policyholders, thus existing policyholders would have an outdated version and would only receive the updated version if they become a new policyholder. The department submits that the commenter's interpretation of the statute contravenes not only the wording of the statute but also the authority of the department to promulgate rules which properly implement, interpret, and prescribe policy.

Comment: Another commenter states that the use of the word "current" in the text is ambiguous since the current Bills of Rights have been presumably provided to insureds with their initial policy and thus this language could be read to eliminate the need for the revision to be sent out at all. This commenter further states that some insurers might prefer to send the new versions to existing policyholders at one time thereby getting the new information to them sooner. This commenter also suggests language that eliminates the word "current," references the 2005 revised version, and eliminates the requirement to provide the Bills of Rights at renewal after all customers have received the revised version.

Agency Response: Regarding the use of the word "current" in the text, the department has removed any ambiguity by specifying that insurers must provide to policyholders the 2005 edition of the Bills of Rights as adopted under the applicable subsections of the rule, unless the 2005 edition of the Bills of Rights has previously been provided to the policyholder. The department changed subsection (b) to be specific to the adoption of BRPA and BRHO and incorporated language from subsection (d) regarding Figure 1 and 2. Changes were made to subsections (c) and (e) to delete the word "current" and replace it with "adopted as set forth . . ."

Comment: A few commenters disagree with the information in the BRPA relating to the availability of underwriting guidelines. They feel the language in the Bills of Rights could be confusing to consumers and should be removed. A commenter suggests the language in the BRPA regarding the rate differentials within counties be removed as it is confusing to consumers.

Agency Response: The department does not agree that the information in the section entitled UNDERWRITING GUIDELINES is confusing, as consumers have the right to pursue that information via the Public Information Act. The department deems all of the information found in the Bills of Rights to be essential. The information found in the section entitled RATE DIFFERENTIAL WITHIN A COUNTY is needed to properly inform the public about very important matters impacting their insurance.

Comment: A couple of commenters state the provisions in the Bills of Rights concerning the use of credit information are duplicative of the information required under state and federal law, create unnecessary confusion and anxiety among consumers and policyholders of insurers who do not in fact use credit information in their underwriting or rating practices, and request either removal of the sections on credit information or a more concise reference to the requirement that companies must provide disclosure notices. A commenter states that the BRPA provision regarding the right to privacy was redundant as it is already provided to consumers under federal law.

Agency Response: The department has re-examined WHAT YOU SHOULD KNOW ABOUT INSURANCE COMPANIES' USE OF CREDIT INFORMATION in both Bills of Rights and the section of the BRPA entitled RIGHT TO PRIVACY and has worked with OPIC to condense these sections while providing information deemed necessary to inform the public about very important matters which may impact their insurance rights, rates and coverage.

Comment: A commenter states that the BRPA provision entitled EQUAL TREATMENT on page 14 seems duplicative to an item on page 17 and adds an unnecessarily adversarial tone to the Bills of Rights.

Agency Response: The department notes that the two causes of action discussed in the provisions are distinct and not related to one another. OPIC and the department added the right to the 2005 version of the Bills of Rights to advise consumers about an important new right.

Comment: A commenter states that the BRPA provision entitled TIMEFRAMES FOR CLAIMS PROCESSING AND PAYMENT regarding Insurance Code Article 21.55 right to collect interest and attorneys' fees contains an incorrect statement of the right. The commenter believes the right to collect first requires the insured to file suit to collect those items as damages and the insured must first prove a failure to comply with the deadlines. The provision, the commenter states, is misleading and should be removed.

Agency Response: The department does not believe this is misleading. Based on the statutory language the consumer may collect 18% plus attorneys' fees whether or not the insured files suit.

Comment: A few commenters state that the APPLIANCE CLAIMS provision in the BRHO should be entitled: APPLIANCE RELATED WATER DAMAGE CLAIMS and should more closely reflect the law in Insurance Code Article 5.35-4 (c) and (e). Another commenter stated that USE OF CLAIMS HISTORY TO NON-RENEW specifically addresses appliance related water damage claims and the language should be clarified. A commenter states that the WATER CLAIMS / MOLD DAMAGE OR CLAIMS provision in the BRHO should more closely reflect 28 TAC §21.1007. A commenter states that the BRHO provision regarding the BURDEN OF PROOF is unnecessary since an

attorney can explain the burden of proof when necessary and the commenter suggests clarification.

Agency Response: The department appreciates the suggestions and has ensured that the Bills of Rights accurately reflect all relevant rules and statutes. The department has added "WATER" to the title of the USE OF CLAIMS HISTORY TO NON-RENEW section.

Comment: A commenter states that the language in the BRHO provision entitled LIMITATION ON CANCELLATION FOR THE DWELLING POLICIES needs to more properly distinguish between homeowners and dwelling policies and it is an incorrect statement under Insurance Code Article 21.49-2B §(4)(i).

Agency Response: The Department disagrees with the commenter's interpretation of Article 21.49-2B. Article 21.49-2B(i) provides that any insurance policy other than personal automobile or homeowners may be canceled if it has been in effect less than 90 days. The Article also specifically states that a homeowners policy may be canceled if the policy has been in effect for less than 60 days and certain specified circumstances exist.

Comment: A commenter states the BRHO provision entitled NOTICE OF CHANGE IN COVERAGE lacks statutory support for the statement that in certain instances the insurance company must provide a comparison between the policy offered and policies adopted by the department. The commenter believes the title and the substance seem incorrect and suggests changing the title to NOTICE IN CHANGE OF POLICY FORM and changing the word "policy" to "policy contract."

Agency Response: The department agrees with the commenter and has made the suggested changes.

Comment: Some commenters point out formatting errors in the Bills of Rights, and one commenter requests that the information box at the end of the Bills of Rights be deleted since many consumers having claims or questions for their insurer or agent often contact OPIC which is referenced in the information box, thereby causing confusion or delay for consumers who require immediate help from their insurers or agents.

Agency Response: The department understands how the box could confuse some consumers who were attempting to contact their insurers and notes that the formatting errors appeared only in the electronic versions of the Bills of Rights. The department has resolved the formatting errors in the Bills of Rights and deleted the information box containing OPIC contact information on the last page of the Bills of Rights.

Comment: One commenter notes that the BRPA ELECTRONIC PAYMENTS requirement does not apply to county mutuals.

Agency Response: The BRPA notes some exceptions to the rights when it states: "This Bill of Rights identifies your rights specified by rule or by state statute, but it does not include all your rights. Also, some exceptions to the rights are not listed here. If your agent, company, or adjuster tells you that one of these rights does not apply to you, contact TDI Consumer Protection at 1-800-252-3439 (463-6515 in Austin) (111-1A), P.O. Box 149091, Austin, TX 78714-9091."

For with changes: Office of Public Insurance Counsel; Progressive County Mutual Insurance Company; Property Casualty Insurers Association of America; Nationwide Insurance and Financial Services; American Insurance Association; and Farmers Insurance Group.

This new section is adopted pursuant to Insurance Code Articles 1.35A, 5.145, 5.13-2, and §36.001. Article 1.35A, Sec. 5(b)(8) of the Insurance Code provides that OPIC shall submit to the department for adoption a consumer bill of rights appropriate to each personal line of insurance to be distributed upon the issuance of a policy by insurers to each policyholder. Article 5.145, §2 provides that, notwithstanding any other provision of the Insurance Code and except as provided in this section, an insurer is governed by the provisions of §8 of Article 5.13-2 relating to policy forms and endorsements for personal automobile and residential property insurance. Article 5.13-2 provides the commissioner authority to regulate policy forms, endorsements, and rates for the writing of insurance subject to this article. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

§5.9970. *Responsibility and Obligation of Insurers To Provide Copies of the Consumer Bills of Rights to Each Insured for Personal Automobile Insurance and for Homeowners, Dwelling and Renters Insurance.*

(a) For the purposes of this section, insurer(s) means an insurance company, reciprocal or interinsurance exchange, mutual insurance company, capital stock company, county mutual insurance company, Lloyd's plan, or other legal entity authorized to write personal automobile insurance or residential property insurance in this state. The term includes an affiliate, as described by §823.003(a) of the Insurance Code, if that affiliate is authorized to write and is writing personal automobile insurance or residential property insurance in this state.

(b) The Texas Department of Insurance adopts the "Consumer Bill of Rights Personal Automobile Insurance" (BRPA - Revised 2005), and the Spanish language translation,  
Figure 1: 28 TAC §5.9970(b)  
Figure 2: 28 TAC §5.9970(b)

(c) All insurers writing personal automobile insurance policies must provide with each new policy of personal automobile insurance a copy of the "Consumer Bill of Rights Personal Automobile Insurance." The Consumer Bill of Rights shall accompany each renewal notice for personal automobile insurance unless the adopted version of the Consumer Bill of Rights as set forth in subsection (b) of this section has been previously provided to the insured by the insurer. The Consumer Bill of Rights must appear in no less than 10 point type and be on separate pages with no other text on those pages. The Spanish language version of the Consumer Bill of Rights Personal Automobile Insurance must be provided to any consumer who requests it from the insurer. A copy of the Consumer Bill of Rights Personal Automobile Insurance can be obtained from the Texas Department of Insurance, MC 104-1A, P.O. Box 149104, Austin, Texas 78714-9104 or from the Texas Department of Insurance website at [www.tdi.state.tx.us](http://www.tdi.state.tx.us).

(d) The Texas Department of Insurance adopts the "Consumer Bill of Rights Homeowners, Dwelling and Renters Insurance" (BRHO - Revised 2005), and the Spanish language translation  
Figure 1: 28 TAC §5.9970(d)  
Figure 2: 28 TAC §5.9970(d)

(e) All insurers writing homeowners, renters or dwelling insurance must provide with each new policy of any such insurance a copy of the "Consumer Bill of Rights Homeowners, Dwelling and Renters Insurance." The Consumer Bill of Rights shall accompany each renewal notice for any such insurance unless the adopted version of the Consumer Bill of Rights as set forth in subsection (d) of this section has been previously provided to the insured by the insurer. The Consumer

Bill of Rights must appear in no less than 10 point type and be on separate pages with no other text on those pages. The Spanish language version of the Consumer Bill of Rights Homeowners, Dwelling and Renters Insurance must be provided to any consumer who requests it from the insurer. A copy of the Consumer Bill of Rights Homeowners, Dwelling and Renters Insurance can be obtained from the Texas Department of Insurance, MC 104-1A, P.O. Box 149104, Austin, Texas 78714-9104 or from the Texas Department of Insurance website at [www.tdi.state.tx.us](http://www.tdi.state.tx.us).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 30, 2005.

TRD-200501367

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

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For further information, please call: (512) 463-6327

## **TITLE 37. PUBLIC SAFETY AND CORRECTIONS**

### **PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE**

#### **CHAPTER 163. COMMUNITY JUSTICE ASSISTANCE DIVISION STANDARDS**

##### **37 TAC §163.40**

The Texas Board of Criminal Justice adopts amendments to §163.40, concerning Substance Abuse Treatment without changes to the text as proposed in the February 11, 2005, issue of the *Texas Register* (30 TexReg 648).

The purpose of the amendments is to implement the legislative mandate in H.B. 2668 (78th Legislature, R.S.) for best practices targeting the substance abuse offender population under community supervision.

Comments were received from Jeffrey D. Van Niel, Staff Counsel for Harris County Community Supervision and Corrections Department.

Comment: Mr. Niel suggests that definitions for "Admitted," "Intake," "Successful Discharge," "Administrative Discharge," "Unsuccessful Discharge," and "Medical Discharge" in the Substance Abuse Treatment Standards be consistent with definitions for Standard 163.39, Residential Services, so as not to lead to confusion.

Response: While these definitions are for both residential and non-residential substance abuse programs, TDCJ-CJAD is working with a field committee to amend standards for Residential Services that would incorporate definitions consistent with those utilized in the Substance Abuse Treatment Standards, as well as, other amendments.

The amendments are adopted under Texas Government Code, §509.015.

Cross Reference to Statutes: Texas Government Code, §509.015.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200501383

Carl Reynolds

General Counsel

Texas Department of Criminal Justice

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For further information, please call: (512) 463-0422

## **TITLE 43. TRANSPORTATION**

### **PART 1. TEXAS DEPARTMENT OF TRANSPORTATION**

#### **CHAPTER 1. MANAGEMENT**

##### **SUBCHAPTER F. ADVISORY COMMITTEES**

##### **43 TAC §1.85**

The Texas Department of Transportation (department) adopts amendments to §1.85, concerning department advisory committees. The amendments to §1.85 are adopted without changes to the proposed text as published in the February 11, 2005 issue of the *Texas Register* (30 TexReg 656) and will not be republished.

##### **EXPLANATION OF ADOPTED AMENDMENTS**

House Bill 3588, 78th Legislature, Regular Session, 2003, added new Chapter 227 to the Transportation Code that allows the department to plan and construct a new set of intermodal transportation facilities known as the Trans-Texas Corridor and that will integrate highway, rail, and utility components.

The department is currently engaged in the planning of the Trans-Texas Corridor, and intends to establish development plans for elements of the Trans-Texas Corridor that will define facilities to be developed as part of that element. The scope of work under the comprehensive development agreement for the Oklahoma to Mexico/Gulf Coast element of the Trans-Texas Corridor (TTC-35) provides for the developer to work with the department to prepare a master development plan that will identify facilities that may be developed as part of the project and to set forth milestones for the development of the project.

At the December 16, 2004 meeting of the Texas Transportation Commission (commission), the Chair requested that rules be drafted that would authorize the creation of an advisory committee to provide checks and balances on the department as it went through the planning process for the Trans-Texas Corridor and the TTC-35 element. Those rules are the subject of this rule-making.

The amendments to §1.85(a) add paragraph (5), which authorizes the commission to create an advisory committee concerning the Trans-Texas Corridor, or a project that is part of the Trans-Texas Corridor, for the purpose of facilitating and achieving support and consensus from affected communities, governmental entities, and other interested parties in the planning of the Trans-

Texas Corridor and in the establishment of development plans for a project that is part of the Trans-Texas Corridor.

The amendments provide that a Trans-Texas Corridor advisory committee shall provide advice and recommendations to the department regarding facilities to be included in a development plan for the Trans-Texas Corridor or a project that is part of the Trans-Texas Corridor. The advice and recommendations of a committee will provide the department with an enhanced understanding of public, business, and private concerns about the Trans-Texas Corridor and projects that are part of the Trans-Texas Corridor, resulting in greater cooperation between the department and all affected parties during project planning and development.

The amendments require a Trans-Texas Corridor advisory committee to report its advice and recommendations to the executive director of the department or designee, and provide that an advisory committee may be abolished at any time by the commission, but in any event no later than the date of completion of the Trans-Texas Corridor or the project for which the advisory committee is created.

The amendments also clarify that the members of an advisory committee may be appointed by an office or official different than the office or official to which the advisory committee is to report and make other non-substantive corrections to subsections (b) and (c).

#### COMMENTS

No comments on the proposed amendments were received.

**STATUTORY AUTHORITY:** The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Government Code, Chapter 2110, which provides that a state agency that is advised by an advisory committee shall adopt rules that state the purpose of the committee, describe the task of the committee, state the manner in which the committee will report to the agency, and establish a date on which the committee is abolished unless the governing body of the agency affirmatively votes to continue the committee in existence.

**CROSS REFERENCE TO STATUTE:** Government Code, Chapter 2110.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Richard D. Monroe

General Counsel

Texas Department of Transportation

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For further information, please call: (512) 463-8630



## CHAPTER 27. TOLL PROJECTS

The Texas Department of Transportation (department) adopts amendments to §27.32, concerning private toll roads, and §27.43 and §27.44, concerning regional tollway authorities. The department also withdraws proposed amendments to §27.72

and §27.73, concerning county toll roads. The amendments to §27.32, §27.43, §27.44, are adopted without changes to the proposed text as published in the December 31, 2004 issue of the *Texas Register* (29 TexReg 12112) and will not be republished.

#### EXPLANATION OF ADOPTED AMENDMENTS

Transportation Code, Chapter 362, provides that a private entity or corporation may not construct any privately-owned toll project that connects to a road, bridge, or highway included in the state highway system unless the project is approved by the Texas Transportation Commission (commission). Section 27.32 describes the studies an applicant must undertake as part of submitting an application to the department for the approval of a project.

Transportation Code, Chapter 366, authorizes the commission to transfer a segment of the non-tolled state highway system to a regional tollway authority. Section 27.43 describes the procedures for the transfer.

Transportation Code, §201.113, authorizes the commission and a regional tollway authority to enter into an agreement for the improvement by the regional tollway authority of portions of the state highway system. Section 27.44 contains provisions for those projects that are approved.

The sections as currently written contain provisions for environmental review and public involvement for private toll roads; conversion of an existing segment of the free state highway system to a turnpike project and transfer to a regional tollway authority; and improvement of the state highway system by regional tollway authorities.

The amendments provide needed clarifications to the environmental study, coordination, public involvement, and environmental documentation processes to make the rules easier to understand.

Concerning the amendment to §27.32, the term environmental documentation is used rather than the existing reference to environmental assessment and/or an environmental impact statement in order to capture all possible environmental documentation that could be prepared by the applicant. The existing language refers to §2.43, subsections (d) and (e), which are limited to environmental assessments and environmental impact statements. The amended language refers to the entire Chapter 2, Subchapter C, to better capture the requirements for all environmental documentation and public involvement.

Section 27.32 is amended to include an added provision specifying that the environmental document must describe all reasonable and feasible measures to avoid, minimize, or mitigate for adverse environmental impacts and all practicable measures to enhance the environment since this is one of the criteria used by the commission for approval. The provisions in Chapter 2, Subchapter C, relating to environmental activities that need to be conducted, are written with references to the department. To clarify roles and responsibilities of the applicant and the department, and to maximize flexibility in that regard, the amended language includes new provisions for projects planned and developed by private entities and corporations under Chapter 2, Subchapter C, relating to environmental studies, public involvement, notice requirements, approval of documentation, notices, and reports.

The amendments also include expanded language regarding the project record to better outline submission to the department by

the private entity or corporation of documentation, reports, summaries, and certifications for the project record.

Amended §27.43 has an added provision specifying that the regional tollway authority is responsible for obtaining all required environmental permits and approvals and commitments for all state and federal environmental laws and regulations for all projects undertaken on facilities under this section since the facility is transferred to the regional tollway authority and removed from the state highway system making the regional authority entirely liable and responsible for the facility. For transferred facilities, existing provisions outlining that the regional tollway authority complete a study consistent with the National Environmental Policy Act and provide for public involvement in accordance with §§2.40-2.51 of this title are deleted and replaced with another provision. The amended provision requires the regional tollway authority to agree to provide for public involvement and to conduct a study of the social and environmental impact for all projects undertaken on the facility. Transferred facilities are removed from the state highway system and the regional tollway authority is entirely liable and responsible for the facility. The department felt it inappropriate to be prescriptive regarding the form and format of the study and public involvement for these transferred facilities. However, the amendments further clarify that projects shall be developed in accordance with §2.50 under Chapter 2, Subchapter C, if federal-aid or federal-aid and state highway funds are requested and approved to assist the project.

Amended §27.44 includes a new provision specifying that the environmental review and public involvement for all improvements of the state highway system under the provisions of this subsection must be done in accordance with Chapter 2, Subchapter C, of this title, titled Environmental Review and Public Involvement for Transportation Projects. The existing language is limited to indicating that the regional tollway authority will comply with all applicable federal, state, and department requirements, including environmental clearance but does not specify what that entails. Chapter 2, Subchapter C, describes activities that need to be conducted with references to the department. In order to clarify roles and responsibilities of the regional tollway authority and the department, and to maximize flexibility in that regard, the amended language includes new provisions for projects planned and developed by the regional tollway authority under Chapter 2, Subchapter C, relating to environmental studies, public involvement, notice requirements, approval of documentation, notices, and reports. The amendments further clarify that projects shall be developed in accordance with §2.50 if federal-aid or federal-aid and state highway funds are requested and approved to assist the project. The existing language indicates that if federal or state financial assistance is requested, the regional tollway authority will comply with all federal, state, and department requirements applicable to federal and state financed projects.

#### COMMENTS

No comments on the proposed amendments were received.

## SUBCHAPTER C. PRIVATE TOLL ROADS

### 43 TAC §27.32

#### STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE: Transportation Code, Chapter 366, §284.009, and §362.051.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 1, 2005.

TRD-200501375

Richard D. Monroe

General Counsel

Texas Department of Transportation

Effective date: April 21, 2005

Proposal publication date: December 31, 2004

For further information, please call: (512) 463-8630



## SUBCHAPTER D. REGIONAL TOLLWAY AUTHORITIES

### 43 TAC §27.43, §27.44

#### STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE: Transportation Code, Chapter 366, §284.009, and §362.051.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 1, 2005.

TRD-200501376

Richard D. Monroe

General Counsel

Texas Department of Transportation

Effective date: April 21, 2005

Proposal publication date: December 31, 2004

For further information, please call: (512) 463-8630



# TABLES & GRAPHICS

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Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word “Figure” followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

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## **Consumer Bill of Rights Personal Automobile Insurance**

**AVISO:** Este documento es un resumen de sus derechos como asegurado. Usted tiene el derecho a llamar a su compañía y pedir una copia de estos derechos en español.

### **What is the Bill of Rights?**

This Bill of Rights is a summary of your rights and does not become a part of your policy. The Texas Department of Insurance (TDI) adopted the Bill of Rights and requires insurance companies to provide you a copy when they issue your policy.

Texas law gives you certain rights regarding your automobile insurance. This Bill of Rights identifies your rights specified by rule or by state statute, but it does not include all your rights. Also, some exceptions to the rights are not listed here. If your agent, company, or adjuster tells you that one of these rights does not apply to you, contact TDI Consumer Protection at 1-800-252-3439 (463-6515 in Austin) (111-1A), P.O. Box 149091, Austin, TX 78714-9091. For a list of the specific law(s) and/or rule(s) summarized in each item of this Bill of Rights, or if you have questions or comments, contact the Office of Public Insurance Counsel at 333 Guadalupe, Suite 3-120, Austin, TX 78701 (512-322-4143) or [www.opic.state.tx.us](http://www.opic.state.tx.us).

This Bill of Rights does not address your responsibilities. Your responsibilities concerning your insurance can be found in your policy. Failure to meet your obligations may affect your rights.

### **Getting Information from the Department of Insurance and Your Insurance Company**

1. **INFORMATION FROM TDI.** You have the right to call TDI free of charge at 1-800-252-3439 or 463-6515 in Austin to learn more about:

- your rights as an insurance consumer;
- the license status of an insurance company or agent;
- the financial condition of an insurance company;
- the complaint ratio and type of consumer complaints filed against an insurance company;
- use of credit information by insurance companies, including which insurance companies use it and access to each company's credit scoring model;
- an insurance company's rates filed with the state;
- an insurance company's underwriting guidelines (subject to exemptions in the Public Information Act, also known as the Open Records Act);
- the Market Assistance Program (MAP) at 1-888-799-MAPP (6277), designed to help those in underserved areas obtain liability insurance; and
- other consumer concerns.

You can also find some of this information on the TDI website at <http://www.tdi.state.tx.us>.

**2. INFORMATION FROM YOUR INSURANCE COMPANY.** You have the right to a toll-free number to call your insurance company free of charge with questions or complaints. You can find this number on a notice accompanying your policy. This requirement does not apply to small insurance companies.

### **What you should know before you buy insurance**

**3. PROHIBITED STATEMENTS.** Your insurance company or agent is prohibited from making false, misleading, or deceptive statements to you relating to insurance.

**4. EXCESS LIMITS.** An insurer or agent cannot require you to purchase liability limits greater than the limits required by law (20/40/15) or require you to purchase other types of coverage as a condition of offering insurance or continued insurance to you.

NOTE: Texas law requires that automobile insurance policies include personal injury protection (PIP) and uninsured motorist protection (UM/UIM) unless you reject these coverages in writing. Also, as a condition of your automobile loan, your lender may require you to purchase other types of coverage, such as collision or comprehensive coverage, to pay for any damage to your vehicle.

**5. CREDIT INFORMATION.** An insurance company cannot deny you insurance solely on the basis of credit information. Insurers who use credit information must also consider other underwriting factors independent of credit information when deciding whether to offer coverage. (For additional information see the section of this Bill of Rights entitled *What you should know about insurance companies' use of credit information.*)

**6. SAFETY NET.** You have the right to buy minimum liability, personal injury protection, and uninsured motorist insurance through the Texas Automobile Insurance Plan Association, also known as TAIPA, if you have been denied coverage by two insurance companies.

NOTE: After 3 consecutive years with no at-fault accidents or traffic violations, you have the right to be insured by your assigned company as a regular policyholder at a rate lower than the TAIPA rate. The company must provide you this offer in writing.

**7. PAYMENT PLANS.** You have the right to pay your automobile insurance premium in installments. Insurance companies may charge a fee for each installment. Your initial down payment cannot exceed the cost of two months' coverage. For a 12-month policy, you have the right to pay the balance in at least ten equal monthly installments. For a six-month policy, you have the right to pay the balance in at least four equal monthly installments.

NOTE: You may be offered an installment loan through a premium finance company. These companies offer high-interest loans with fees and obligations that may be beyond those included in installment plans offered directly by insurance companies.



8. **ELECTRONIC PAYMENTS.** If you authorize your insurer to withdraw your premium payments directly from your financial institution, your insurer cannot increase the amount withdrawn unless:

- the insurer notifies you of the premium increase at least 30 days prior to its effective date and provides a postage paid form you can use to object to the increase; and
- you do not notify the insurer or financial institution that you object to the increase at least 5 days prior to the increase.

This does not apply to premium increases specifically scheduled in the original policy, to increases based on policy changes you request, or to an increase that is less than \$10 or 10% of the previous month's payment.

9. **NOTICE OF REDUCED COVERAGE.** If an insurer uses an endorsement to reduce the amount of coverage provided by your policy, the insurer must give you a written explanation of the change made by the endorsement. The insurer must provide the explanation before the effective date of the new or renewal policy. An insurance company cannot reduce coverage during the policy period unless you request the change. If you request the change, the company is not required to provide notice.

10. **EXPLANATION OF DENIAL.** Upon request, you have the right to be told in writing why you have been denied coverage. The written statement must fully explain the decision, including the precise incidents, circumstances, or risk factors that disqualified you. It must also state the sources of information used.

NOTE: The obligation to provide a written explanation applies to insurance companies directly. An independent agent does not have a specific duty to quote the lowest possible rate to a consumer or to provide a written statement explaining why the agent did not offer the consumer the lowest possible rate.

11. **RATE DIFFERENTIAL WITHIN A COUNTY.** If an insurance company subdivides a county for the purpose of charging different rates for each subdivision, the difference between the lowest and the highest rate cannot exceed 15% unless actuarially justified.

12. **RIGHT TO PRIVACY.** You have the right to prevent an insurance company, agent, adjuster or financial institution from disclosing your personal financial information to companies that are not affiliated with the insurance company or financial institution. Some examples are income, social security number, credit history and premium payment history.

If you apply for a policy, the insurance company or financial institution must notify you if it intends to share financial information about you and give you at least 30 days to refuse. This refusal is called "opting out." If you buy a policy, the insurance company or financial institution must tell you what information it collects about you and whether it intends to share any of the information, and give you at least 30 days to opt out. Agents and adjusters who intend to share your information with anyone other than the insurance company or financial institution must give you similar notices.

You can opt out at any time. Your decision to opt out remains in effect unless you revoke it.

These protections do not apply to information:

- publicly available elsewhere;
- insurance companies or financial institutions are required by law to disclose; or
- insurance companies or financial institutions must share in order to conduct ordinary business activities.

### **What you should know about cancellation and nonrenewal**

**Cancellation** means that **before the end** of the policy period the insurance company:

- terminates the policy;
- reduces or restricts coverage under the policy; or
- refuses to provide additional coverage to which you are entitled under the policy.

**Refusal to renew** and non-renewal mean the policy terminates **at the end** of the policy period.

The **policy period** is shown on the declarations page at the front of your policy.

13. ***LIMITATION ON CANCELLATION.*** After your initial policy with your company has been in effect for 60 days, that insurance company cannot cancel your policy unless:

- you don't pay your premium when due;
- you file a fraudulent claim;
- your driver's license or car registration is revoked or suspended;
- the driver's license of any household resident or person who customarily drives a covered auto is suspended or revoked. If you agree to exclude coverage for that person, the insurance company cannot cancel your policy for this reason; or
- TDI determines continuation of the policy would result in violation of insurance laws.

14. ***NOTICE OF CANCELLATION.*** To cancel your policy, your insurance company must mail notice at least 10 days prior to cancellation. Your policy may provide for even greater notice.

15. ***POLICYHOLDER'S RIGHT TO CANCEL.*** You have the right to cancel your policy at any time and receive a refund of the remaining premium. The refund will be paid to you unless your premium was financed through a premium finance company. In that case, the refund will be paid to the premium finance company to reduce the amount you owe on your loan.

16. ***CHANGE IN MARITAL STATUS.*** If your marital status changes, you have the right to continue your insurance coverage. You have a right to a new policy in your name that has coverages which most nearly approximate the coverages of your prior policy, including the same expiration date. The insurance company cannot date the new policy so that a gap in coverage occurs.

17. **NOT-AT-FAULT CLAIMS.** Your insurance company cannot refuse to renew your policy solely because of any of the following types of claims:

- claims involving damage from a weather-related incident that does not involve a collision, like damage from hail, wind or flood;
- accidents or claims involving damage by contact with animals or fowls;
- accidents or claims involving damage caused by flying gravel or flying objects; however, if you have three of these claims in a three year period, the insurance company may raise your deductible on your next renewal date;
- towing and labor claims; however, once you have made four of these claims in a three year period, the company may eliminate this coverage from your policy on your next renewal date; and
- any other accident or claim that was not your fault unless you have two or more of these claims or accidents in a one year period.

18. **USE OF AGE TO NONRENEW.** Your insurance company cannot refuse to renew your policy based solely on the age of any person covered by the policy. This includes placing you in a higher priced company or requiring a named driver exclusion for a teenager who reaches driving age.

19. **USE OF CREDIT INFORMATION TO NONRENEW.** An insurance company cannot refuse to renew your policy solely on the basis of credit information. Insurers who use credit information must also consider other underwriting factors independent of credit information when deciding whether to renew coverage. (For additional information see the section of this Bill of Rights entitled *What you should know about insurance companies' use of credit information.*)

20. **LENGTH OF POLICY TERM.** If the term of your insurance policy is less than one year, your insurance company must renew that policy until it has been in effect for one year. Your insurance company may only refuse to renew your policy effective on the anniversary of the policy's original effective date. For instance, if your policy was originally effective on January 1, Year 1, the insurance company must renew your policy to provide coverage until January 1, Year 2, and thereafter, may only refuse to renew your policy effective January 1 of any subsequent year.

21. **NOTICE OF NONRENEWAL.** If the insurance company does not mail you notice of non-renewal at least 30 days before your policy expires, you have the right to require the insurance company to renew your policy.

22. **EXPLANATION OF CANCELLATION OR NONRENEWAL.** Upon request, you have the right to a written explanation of an insurance company's decision to cancel or non-renew your policy. The written statement must fully explain the decision, including the precise incidents, circumstances, or risk factors that disqualified you. It must also state the sources of information used.

### **What you should know when you file a claim**

23. ***FAIR TREATMENT.*** You have the right to be treated fairly and honestly when you make a claim. If you believe an insurance company has treated you unfairly, call the Department of Insurance at 1-800-252-3439 (463-6515 in Austin) or download a complaint form from the TDI website at <http://www.tdi.state.tx.us>. You can complete a complaint form on-line via the Internet or fax it to TDI at 512/475-1771.

24. ***SETTLEMENT OFFER.*** You have the right to reject any settlement amount, including any unfair valuation, offered by the insurance company.

25. ***EXPLANATION OF CLAIM DENIAL.*** Your insurance company must tell you in writing why your claim or part of your claim was denied.

26. ***TIMEFRAMES FOR CLAIM PROCESSING AND PAYMENT.*** When you file a claim on your own policy, you have the right to have your claim processed and paid promptly. If the insurance company fails to meet required claims processing and payment deadlines, you have the right to collect 18% annual interest and attorney's fees in addition to your claim amount.

Generally, within **15 calendar days**, your insurance company must acknowledge receipt of your claim and request any additional information reasonably related to your claim. Within 15 business days after receipt of all requested information, the company must approve or deny your claim in writing. The law allows the insurance company to extend this deadline up to 45 days if it notifies you that more time is needed and tells you why.

After notifying you that your claim is approved, your insurance company must pay the claim within 5 business days.

If your claim results from a weather-related catastrophe or other major natural disaster as defined by TDI, your insurance company may take 45 additional days to approve or deny your claim and 15 additional days to pay your claim.

27. ***CHOICE OF REPAIR SHOP AND REPLACEMENT PARTS.*** You have the right to choose the repair shop and replacement parts for your vehicle. An insurance company may not specify the brand, type, kind, age, vendor, supplier, or condition of parts or products used to repair your automobile. The insurance company must provide you notice of the above requirements as follows:

- claims submitted by telephone – written notice within 3 business days or immediate verbal notice, followed by written notice within 15 days;
- claims submitted in person – immediate written notice at the time you present your vehicle to an insurer or an insurance adjuster or other person in connection with a claim for damage repair;
- claims submitted in writing – written notice must be provided within 3 business days of the insurance company's receipt of the notice.

28. **DEDUCTIBLE RECOVERY.** If another person is liable for damage to your auto and you filed a claim and paid a deductible on your own policy, your insurance company must make a reasonable and diligent effort to recover the deductible from that person within twelve months from the date your claim is paid. If not, your company must:

- authorize you, at least 90 days prior to the expiration of the statute of limitations, to pursue your own collection efforts, or
- refund your deductible.

29. **NOTICE OF LIABILITY CLAIM SETTLEMENT.** Your insurance company must notify you if it intends to pay a liability claim against your policy. The company must notify you in writing of an initial offer to compromise or settle a claim against you no later than the 10th day after the date the offer is made. The company must notify you in writing of any settlement of a claim against you no later than the 30th day after the date of the settlement.

30. **INFORMATION NOT REQUIRED FOR CLAIM PROCESSING.** You have the right to refuse to provide your insurance company with information that does not relate to your claim. In addition, you may refuse to provide your federal income tax records unless your insurer gets a court order or your claim involves lost income or a fire loss.

#### **What you should know about prohibited discrimination**

31. **PROTECTED CLASSES.** An insurance company cannot discriminate against you by refusing to insure you; limiting the amount, extent or kind of coverage available to you; charging you a different rate for the same coverage; or refusing to renew your policy:

- because of race, color, religion, or national origin; or
- unless justified by actual or anticipated loss experience, because of age, gender, marital status, geographic location, or disability or partial disability.

32. **UNDERWRITING GUIDELINES.** Underwriting guidelines may not be unfairly discriminatory and must be based on sound actuarial principles.

33. **EQUAL TREATMENT.** Unless based on sound actuarial principles, an insurance company may not treat you differently from other individuals of the same class and essentially the same hazard. If you sustain economic damages as a result of such unfair discrimination, you have the right to sue that insurance company in Travis County District Court.

If your suit prevails, you may recover economic damages, court costs and attorney and necessary expert witness fees. If the court finds the insurance company knowingly violated your rights, it may award up to an additional \$25,000 per claimant.

You must bring the suit on or before the second anniversary of the date you were denied insurance or the unfair act occurred or the date you reasonably should have discovered the occurrence of the unfair act. If the court determines your suit was groundless and you brought the lawsuit in bad faith, or brought it for the purposes of harassment, you will be required to pay the insurance company's court costs and attorney fees.

### **What you should know about insurance companies' use of credit information**

34. **REQUIRED DISCLOSURE.** If an insurance company uses credit information to make underwriting or rating decisions, the company must provide you a disclosure statement within 10 days after receiving your completed application for insurance.

The disclosure indicates whether the insurer will obtain and use your credit information and lists your specific legal rights, including:

- credit information insurance companies cannot use against you;
- how you can get reasonable exceptions that your insurer is required to make to its use of credit information if certain life events, such as divorce, death of a close family member, or identity theft, hurt your credit;
- the notice\* an insurer must send you when making a credit-based decision that harms your ability to get or keep insurance or requires you to pay a higher premium; and
- how you can dispute credit information and require an insurer to re-rate your policy if the rate was increased because of inaccurate or unverifiable credit information.

\* The notice must include a description of up to four primary factors that influenced the action taken by the insurer. Generalized terms such as "poor credit rating" are not sufficient.

Insurers must use the disclosure form (CD-1) adopted by the Commissioner or an equivalent disclosure form filed prior to use with TDI. The CD-1 is available at [www.tdi.state.tx.us/company/pccrdtds.html](http://www.tdi.state.tx.us/company/pccrdtds.html) or by calling 1-800-252-3439. Additional information regarding insurers' use of credit information is available at [www.tdi.state.tx.us/commish/credit.html](http://www.tdi.state.tx.us/commish/credit.html).

### **What you should know about enforcing your rights**

35. **FILING COMPLAINTS.** You have the right to complain to TDI about any insurance company and/or insurance matter and to receive a prompt investigation and response to your complaint. To do so, you should:

- call TDI's **Consumer Help Line** at 1-800-252-3439, in Austin 463-6515 for service in both English and Spanish;
- write to the Texas Department of Insurance, Consumer Protection (111-1A), P.O. Box 149091, Austin, Texas 78714-9091;
- e-mail TDI at [ConsumerProtection@tdi.state.tx.us](mailto:ConsumerProtection@tdi.state.tx.us);
- fax your complaint to (512) 475-1771;
- download or complete a complaint form on line from the TDI website at <http://www.tdi.state.tx.us>; or
- call the TDI Publications/Complaint Form order line (24 hours) at 1-800-599-SHOP (7467), in Austin 305-7211.

**NOTE:** TDI offers interpreter services and publications in alternate formats. Persons needing more information in alternate layouts or languages can call the *TDI Consumer Help Line* listed above.

36. ***RIGHT TO SUE.*** If an insurance company violates your rights, you may be able to sue that company in court, including small claims court, with or without an attorney.

37. ***BURDEN OF PROOF.*** If you sue to recover under your insurance policy, the insurance company has the burden of proof as to any application of an exclusion in the policy and any exception to or other avoidance of coverage claimed by the insurer.

38. ***REQUESTING NEW RULES.*** You have the right to ask in writing that TDI make or change rules on any automobile insurance issue that concerns you. Send your written request to: Texas Department of Insurance, Attn: Commissioner (113-2A), P.O. Box 149104, Austin, TX 78714-9104.

Figure 2: 28 TAC §5.9970(b)

## **DECLARACIÓN DE DERECHOS DEL CONSUMIDOR SEGUROS DE AUTOMÓVIL PERSONAL**

**AVISO:** Este documento es un resumen de sus derechos como asegurado. Usted tiene derecho a llamar a su aseguradora y pedir una copia en español.

### **¿Qué es la Declaración de Derechos?**

Esta Declaración de Derechos es un resumen de sus derechos, no forma parte de su póliza. El Departamento de Seguros de Texas (TDI) adoptó la Declaración de Derechos y exige que la aseguradora adjunte una copia cuando le expide su póliza.

Las leyes de Texas le otorgan ciertos derechos respecto al seguro de automóvil. Esta Declaración de Derechos describe los que por reglamento o precepto estatal la ley le otorga, pero no los incluye todos, tampoco incluye aquí algunas excepciones. Si su agente, aseguradora o ajustador le dice que alguno de estos derechos no le corresponden comuníquese con TDI, Oficina de Protección al Consumidor, 1-800-252-3439 (en Austin 463-6515) (111-1A) P.O. Box 149091, Austin, TX 78714-9091. Para pedir una copia de alguna ley(es) y/o reglamento(s) específico que hemos condensado en este documento, o si tiene alguna pregunta o comentario, favor de comunicarse con la Oficina del Asesor Público de Seguros, 333 Guadalupe Street, Suite 3-120, Austin, TX 78701 (512-322-4143) o [www.opic.state.tx.us](http://www.opic.state.tx.us).

Esta Declaración de Derechos no menciona las responsabilidades suyas, esas están descritas en su póliza. La falta de cumplimiento con sus responsabilidades podría afectar sus derechos.

### **Información que puede pedir al Departamento de Seguros de Texas y a su aseguradora**

**1. INFORMACIÓN QUE PUEDE PEDIR A TDI.** Usted tiene derecho a llamar gratis a TDI al 1-800-252-3439, o en Austin al 463-6515 para pedir más información sobre:

- sus derechos como consumidor de seguros;
- el estado de licencia de alguna aseguradora o agente;
- la solidez económica de alguna aseguradora;
- el promedio y tipo de quejas que los consumidores han presentado en contra de alguna aseguradora;
- la manera en que las aseguradoras usan la información de crédito, incluso cuáles la usan y la fórmula que cada aseguradora utiliza para las calificaciones de crédito;
- las tarifas que la aseguradora tiene registradas en el estado;
- los métodos de aseguramiento de la aseguradora (sujeto a las excepciones provistas en la Ley de Información Pública, también conocida como la Ley de Revelación de Datos;
- el Programa de Ayuda al Mercado de Seguros (MAP) 1-888-799-MAPP (6277) el cual es un programa diseñado para ayudar a los consumidores que viven en regiones con escasez de seguros a obtener seguro de responsabilidad civil; y
- otros asuntos de interés al consumidor.



También puede encontrar alguna de esta información en el sitio electrónico de TDI <http://www.tdi.state.tx.us>

**2. INFORMACIÓN QUE PUEDE PEDIR A SU ASEGURADORA.** Usted tiene derecho a que la aseguradora tenga un número telefónico al que pueda llamar gratis para hacer preguntas o presentar quejas. Este número lo encontrará en un aviso adjunto a su póliza. Las aseguradoras pequeñas no están obligadas a cumplir con este requisito.

### **Lo que debe saber antes de comprar seguro**

**3. DECLARACIONES PROHIBIDAS.** Su aseguradora y agente tienen prohibido decirle cosas falsas, engañosas o embaucadoras respecto a los seguros.

**4. NO LE PUEDEN EXIGIR COMPRAR MÁS COBERTURA QUE LA REQUERIDA POR LEY.** Como condición para venderle un seguro o continuar asegurándolo la aseguradora no puede exigirle que compre cobertura de responsabilidad civil en exceso de las cantidades que la ley requiere (20-40-15) o que compre otros tipos de cobertura.

**AVISO:** Las leyes de Texas requieren que las pólizas de seguro de automóvil incluyan la cobertura para lesiones personales (PIP) y la cobertura contra conductor sin seguro (UM/UIM) a menos que usted las rechace por escrito. Además, es posible que como condición para autorizarle el préstamo de auto la financiera le exija que compre otros tipos de cobertura, por ejemplo: cobertura contra choque o cobertura amplia, que pagan por los daños al vehículo suyo.

**5. INFORMACIÓN DE CRÉDITO.** La aseguradora no puede negarle el seguro basándose solamente en la información de su historial de crédito. Las aseguradoras que utilizan la información de crédito también tienen que considerar otros factores de aseguramiento independientes a la información de crédito cuando deciden ofrecerle cobertura. (Para información adicional vea la sección de este documento titulada *Sepa lo que las aseguradoras tienen que hacer cuando utilizan la información de crédito*)

**6. RED DE SEGURIDAD.** Si dos aseguradoras se han negado a venderle seguro usted tiene derecho a comprar cobertura mínima de responsabilidad civil, lesiones personales y conductor sin seguro por medio de la Asociación Plan de Seguros de Automóvil de Texas (conocida como TAIPA).

**AVISO:** Después de tres años consecutivos sin infracciones de tránsito y sin accidentes con culpa usted tiene derecho a ser asegurado por la aseguradora asignada como un cliente regular, con tarifa más baja que la de TAIPA. Esto se lo tiene que ofrecer la aseguradora por escrito.

**7. PLANES DE PAGO.** Usted tiene derecho a pagar a plazos la prima de su póliza de automóvil. Las aseguradoras podrían cobrar un recargo en cada pago. Su pago inicial no puede ser más de lo que cuesta la cobertura de dos meses. En una póliza de 12 meses usted tiene derecho a pagar el saldo, por lo menos, en diez mensualidades iguales. En las pólizas de seis meses usted tiene derecho a pagar el saldo, por lo menos, en cuatro mensualidades iguales.

**AVISO:** Es posible que le ofrezcan el plan de pagos por medio de una financiera de primas. Los préstamos de esas financieras pueden tener tasas de interés más alto, más recargos y más responsabilidades que los planes de pago ofrecidos directamente por las aseguradoras.

**8. PAGOS ELECTRÓNICOS.** Si usted autoriza que su aseguradora retire los pagos de su prima directamente de su cuenta bancaria la aseguradora no puede aumentar la cantidad que retira, a menos que:

- le notifique del aumento de prima mínimo 30 días antes de la fecha en que el aumento entrará en vigor y le envíe una forma con porte pagado para que usted pueda disputar el aumento, y
- si usted no notifica a la aseguradora o a la institución bancaria, mínimo cinco días antes de la fecha en que el aumento entrará en vigor, que usted está disputando el aumento.

Esto no aplica a los aumentos de prima específicamente programados en la póliza original, ni a los aumentos debido a cambios que usted solicita en la póliza, o a un aumento que es menos de \$10 o el 10% del pago del mes anterior.

**9. AVISO DE REDUCCIÓN DE COBERTURA.** Si por medio de una cláusula adicional la aseguradora reduce la cobertura de su póliza, la aseguradora tiene que darle una explicación por escrito del cambio que con la cláusula adicional le está haciendo. La aseguradora tiene que darle esta explicación antes de la fecha en que la nueva póliza o la renovación de la póliza entra en vigor. La aseguradora no puede reducir la cobertura durante la vigencia de la póliza, a menos que usted solicite el cambio. Si usted es el que solicita el cambio la aseguradora no está obligada a darle aviso.

**10. EXPLICACIÓN DE RECHAZO.** A petición suya usted tiene derecho a que la aseguradora le diga por escrito el motivo por el que le negó la cobertura. En la explicación por escrito la aseguradora tiene que explicar detalladamente el motivo por el que decidió negarle la cobertura, incluso tiene que decirle los percances precisos, las circunstancias y los factores de riesgo que lo descalificaron. También tiene que decirle las fuentes de información que utilizó.

**AVISO:** La obligación de darle una explicación por escrito le corresponde directamente a la aseguradora. Los agentes independientes no tienen el deber específico de cotizarle la tarifa más baja posible o darle una explicación por escrito del motivo por el que no le ofrecieron la tarifa más baja posible.

**11. TARIFAS DIFERENTES DENTRO DEL MISMO CONDADO.** Si una aseguradora subdivide un condado con el propósito de cobrar diferentes tarifas en cada subdivisión, la diferencia entre la tarifa más baja y la más alta no puede exceder el 15%, a menos que esté justificado por datos actuariales.

**12. DERECHO A PRIVACIDAD.** Usted tiene derecho a evitar que una aseguradora, agente, ajustador o institución financiera revele los datos económicos personales suyos a compañías que no están afiliadas a la aseguradora o institución financiera, por ejemplo: su ingreso, número de seguro social, historial de crédito y su historial de pago de primas.

Si usted solicita una póliza la aseguradora o institución financiera tiene que avisarle si intenta compartir sus datos económicos, y tiene que darle mínimo 30 días para que usted pueda rehusarse a permitir que los revelen. El rehusarse a que revelen sus datos se conoce como “opting out”. Si usted compra una póliza la aseguradora o institución financiera tiene que decirle cual información recaba sobre usted y si intenta compartirla, y tiene que darle mínimo 30 días para que pueda ejercer su “opting out”. Los agentes y ajustadores que intentan compartir sus datos con cualquiera ajeno a la aseguradora o institución financiera también tienen que darle un aviso semejante.

Usted puede ejercer el “opting out” en cualquier momento. Su decisión de “opting out” permanece vigente, a menos que usted la revoque por escrito.

Estas protecciones no aplican a:

- la información que en otros lugares está a disposición del público;
- la información que las aseguradoras o instituciones financieras están obligadas por ley a revelar; o
- la información que las aseguradoras o instituciones financieras tienen que compartir para conducir sus actividades normales de negocios.

### **Lo que debe saber sobre las cancelaciones y no renovaciones**

**Cancelación** significa que antes de terminar la vigencia de la póliza la aseguradora:

- termina la póliza;
- reduce o restringe la cobertura de la póliza; o
- se rehúsa a ofrecer cobertura adicional a la que usted tiene derecho bajo la póliza.

**Rehusarse a renovar y no renovación** significa que la póliza termina cuando termina la vigencia de la póliza.

El **período de vigencia de la póliza** está escrito en la página de declaraciones al frente de su póliza.

**13. LIMITACIÓN EN LA CANCELACIÓN.** Una vez que el período inicial de la póliza que expidió la aseguradora ha estado en vigor por 60 días la aseguradora no puede cancelar la póliza a menos que:

- usted no pague la prima a su debido tiempo;
- usted presente una reclamación fraudulenta;
- su licencia de conductor o la matrícula de su auto sea revocada o suspendida;
- la licencia de conductor de cualquier residente de su hogar o individuo que regularmente maneja el auto asegurado sea suspendida o revocada. La aseguradora no puede cancelarle la póliza por este motivo si usted acepta excluir al individuo de la cobertura de su póliza;
- TDI determina que continuar la póliza resultaría en una infracción a las leyes de seguros.

**14. AVISO DE CANCELACIÓN.** Para cancelar la póliza la aseguradora tiene que enviarle aviso mínimo con 10 días de anticipación. Su póliza podría estipular más tiempo para este tipo de aviso.

**15. EL DERECHO DEL TITULAR DE LA PÓLIZA A CANCELAR LA PÓLIZA.** Usted tiene derecho a cancelar su póliza en cualquier momento, y a recibir reembolso de la prima no devengada. El reembolso se lo pagarán a usted, a menos que la prima haya sido financiada por medio de una financiera. En ese caso el reembolso se le pagará a la financiera para disminuir lo que usted debe en el préstamo.

**16. CAMBIO DE ESTADO MARITAL.** Si su estado marital cambia usted tiene derecho a continuar con su cobertura de seguro. Usted tiene derecho a una póliza nueva, a su nombre, con coberturas que más se aproximen a las coberturas de su póliza anterior, incluso con la misma fecha de vencimiento. La aseguradora no puede fechar la nueva póliza de manera que entre la póliza anterior y la nueva haya un lapso de cobertura.

**17. RECLAMACIONES QUE NO SON POR SU CULPA.** La aseguradora no puede rehusarse a renovar su póliza basándose únicamente en las reclamaciones debido a:

- percances relacionados al mal tiempo en los que no estuvo involucrado un choque, por ejemplo: daños causados por el granizo, viento o inundaciones;
- accidentes o reclamaciones por daños causados por colisión con animales o fauna;
- accidentes o reclamaciones por daños causados por grava suelta u objetos volátiles; pero si usted presenta tres reclamaciones de este tipo en el transcurso de tres años la aseguradora podría aumentar su deducible en la siguiente fecha de renovación;
- gastos y maniobras de grúa; pero, una vez que usted ha presentado cuatro reclamaciones de este tipo en el transcurso de tres años la aseguradora podría eliminar esta cobertura de su póliza en la siguiente fecha de renovación; y
- cualquier otro accidente o reclamación que no fue por culpa suya, a menos que tenga dos o más de este tipo de reclamaciones o accidentes en el transcurso de un año.

**18. USO DE LA EDAD PARA NO RENOVAR.** Su aseguradora no puede rehusarse a renovar la póliza basándose únicamente en la edad de cualquiera de las personas amparadas por la póliza, tampoco lo puede asignar a una aseguradora que cobra tarifas más caras o exigirle que excluya por nombre a un adolescente que cumple la edad de manejar.

**19. EL USO DE LA INFORMACIÓN DE CRÉDITO PARA NO RENOVAR.** La aseguradora no puede rehusarse a renovar su póliza basándose únicamente en su historial de crédito. Las aseguradoras que utilizan la información de crédito para decidir si renovar la póliza también tienen que considerar otros factores de aseguramiento independientes a la información de su historial de crédito. (Para más información vea la sección de este documento titulada *Sepa lo que las aseguradoras tienen que hacer cuando utilizan la información de crédito.*)

**20. EL PERÍODO DE VIGENCIA DE LA PÓLIZA.** Si el período de vigencia de su póliza es menos de un año, la aseguradora tiene que renovársela hasta que se complete un año. La aseguradora solamente puede rehusarse a renovar la póliza en el aniversario de la fecha original de la póliza. Por ejemplo: si el período de vigencia del primer año de la póliza comenzó el 1° de

enero, la aseguradora tiene que renovar la póliza hasta el siguiente 1º de enero; el segundo año y posteriormente solamente puede rehusarse a renovarla el 1º de enero del cualquier año posterior.

**21. AVISO DE NO RENOVACIÓN.** Si la aseguradora no le envía aviso de no renovación mínimo 30 días antes del vencimiento de su póliza, usted tiene derecho a exigir que la aseguradora la renueve.

**22. EXPLICACIÓN DE CANCELACIÓN O NO RENOVACIÓN.** Usted tiene derecho, sujeto a que lo solicite, a que la aseguradora le explique por escrito el motivo por el que decidió cancelar o no renovar la póliza. La explicación por escrito tiene explicar totalmente el motivo, incluyendo los percances precisos, las circunstancias o los factores de riesgo que lo descalificaron. También tiene que describir las fuentes de información que utilizó la aseguradora.

### **Lo que debe saber cuando presenta una reclamación**

**23. TRATO JUSTO.** Usted tiene derecho a que lo traten justa y honestamente cuando presenta una reclamación. Si cree que una aseguradora lo ha tratado injustamente llame al Departamento de Seguros de Texas al 1-800-252-3439 (en Austin 463-6515) o descargue una forma de queja del sitio electrónico de TDI <http://www.tdi.state.tx.us>. Puede llenar la forma directamente en nuestro sitio electrónico o enviarla por Fax a TDI al 512/475-1771.

**24. OFRECIMIENTO DE LIQUIDACIÓN.** Usted tiene derecho a negarse a aceptar cualquier cantidad que la aseguradora le ofrezca para liquidar la reclamación, incluso cualquier valuación injusta.

**25. EXPLICACIÓN DE RECHAZO DE RECLAMACIÓN.** Su aseguradora tiene que decirle por escrito el motivo por el que rechaza la reclamación o parte de la reclamación.

**26. MARCOS DE TIEMPO PARA EL PROCESO Y PAGO DE RECLAMACIONES.** Cuando presenta una reclamación a cargo de su propia póliza usted tiene derecho a que sea procesada y pagada prontamente. Si la aseguradora no cumple con los marcos de tiempo estipulados para el proceso y pago de reclamaciones usted tiene derecho a cobrar interés anual al 18% y honorarios de abogado, además de la suma de su reclamación.

Generalmente, dentro de **15 días de calendario**, su aseguradora tiene que acusar recibo de la reclamación y solicitar cualquier información razonablemente relacionada a la misma. Dentro de 15 días hábiles a partir de que recibe la información solicitada, la aseguradora tiene que aprobar o negar la reclamación por escrito. La ley permite que la aseguradora extienda este período de tiempo hasta por 45 días si le avisa que necesita más tiempo y le explica el motivo.

Después de notificarle que la reclamación ha sido aprobada la aseguradora tiene que pagarla dentro de los siguientes 5 días hábiles.

Si su reclamación es a consecuencia de una catástrofe relacionada al mal tiempo u otro percance de la naturaleza, según definición de TDI, la aseguradora podría tomarse 45 días adicionales para aprobar o negar la reclamación, y 15 días adicionales para pagarla.

**27. SU DERECHO A ESCOGER EL TALLER Y LAS REFACCIONES.** Usted tiene derecho a escoger el taller y las refacciones para reparar su vehículo. La aseguradora no puede especificar la marca, tipo, clase, edad, vendedor, proveedor o la condición de las refacciones o productos usados para reparar su automóvil. La aseguradora tiene que darle aviso de los requisitos arriba mencionados de la siguiente manera:

- reclamaciones por teléfono – aviso por escrito dentro de tres días hábiles o aviso verbal inmediato seguido por un aviso por escrito dentro de los siguientes 15 días;
- reclamaciones presentadas en persona – aviso inmediato por escrito a la hora que presenta su vehículo a la aseguradora o al ajustador o a otra persona en conexión con la reclamación para la reparación de los daños;
- reclamaciones presentadas por escrito – aviso por escrito dentro de los siguientes tres días hábiles a partir de la fecha en que la aseguradora recibe la reclamación.

**28. RECUPERANDO EL DEDUCIBLE.** Si un tercero es responsable por los daños al vehículo suyo y usted, bajo su póliza, presentó una reclamación y pagó el deducible, su aseguradora tiene que hacer un esfuerzo razonable y diligente para recuperar, del tercero, el deducible que usted pagó, y tiene que hacer esto en el transcurso de los 12 meses a partir de la fecha en que su reclamación es pagada. Si la aseguradora no hace esto, la aseguradora tiene que:

- darle autorización a usted, mínimo 90 días antes del vencimiento del estatuto de limitaciones, para que usted pueda ejercer sus propios trámites de cobro, o
- reembolsarle el deducible.

**29. AVISO DE PAGO DE RECLAMACIÓN POR RESPONSABILIDAD CIVIL.** Su aseguradora tiene que avisarle si intenta pagar una reclamación de responsabilidad civil a cargo de su póliza. La aseguradora tiene que avisarle por escrito sobre cualquier ofrecimiento que está haciendo para resolver o liquidar la reclamación en contra suya, y tiene que avisarle a más tardar el décimo día a partir de la fecha en que hace el ofrecimiento. La aseguradora tiene que avisarle por escrito cuando liquida una reclamación en contra suya, y tiene que avisarle a más tardar el treintavo día a partir de la fecha en que hace la liquidación.

**30. INFORMACIÓN QUE NO SE REQUIERE PARA EL PROCESO DE RECLAMACIÓN.** Usted tiene derecho a rehusarse a dar a la aseguradora información ajena a la reclamación. Además, usted puede rehusarse a darle sus reportes de declaración de impuestos, a menos que la aseguradora obtenga una orden judicial o su reclamación sea respecto a la pérdida de ingresos o debido a un incendio.

#### **Lo que debe saber sobre lo que está prohibido en cuestión de discriminación**

**31. SECTORES PROTEGIDOS.** La aseguradora no puede discriminar en contra suya al rehusarse a asegurarlo, limitarle la cantidad, grado o clase de cobertura a disposición suya; tampoco puede cobrarle una tarifa diferente por la misma cobertura o rehusarse a renovar la póliza debido a:

- su raza, color, religión u origen nacional; o
- su edad, sexo, estado marital, ubicación geográfica, discapacidad o discapacidad parcial, a menos que lo justifique con una experiencia de pérdidas reales o anticipadas.

**32. GUIAS DE ASEGURAMIENTO.** Las guías de aseguramiento no pueden ser injustamente discriminatorias, y tienen que estar basadas en principios sólidos de actuario.

**33. TRATO UNIFORME.** A menos que se base en principios sólidos de actuario la aseguradora no puede tratarlo de manera diferente a como trata a otros individuos de su misma clase y que esencialmente presentan el mismo riesgo. Si sostiene pérdidas económicas como resultado de este tipo de discriminación usted tiene derecho a demandar a la aseguradora en un juzgado de distrito del Condado de Travis.

Si el veredicto es a su favor usted podría recuperar sus pérdidas económicas, los costos del juzgado, los honorarios de su abogado y de los testigos peritos necesarios. Si la corte determina que la aseguradora a sabiendas infraccionó sus derechos también podría otorgar a cada reclamante hasta la cantidad de \$25,000.00

La demanda tendría que presentarla a más tardar para el segundo aniversario de la fecha en que la aseguradora le negó el seguro o la acción injusta ocurrió o la fecha en que usted razonablemente debió haber descubierto que la acción injusta ocurrió. Si la corte determina que la demanda no tiene fundamento y que usted la presentó de mala fe, o que la presentó con propósitos de acoso, usted estará obligado a pagar los costos de corte y los honorarios del abogado de la aseguradora.

#### **Sepa lo que las aseguradoras tienen que hacer cuando utilizan la información de crédito**

**34. LA ASEGURADORA ESTA OBLIGADA A AVISARLE.** Si la aseguradora utiliza la información de crédito para hacer decisiones de aseguramiento o clasificación de póliza, la aseguradora está obligada a darle una declaración de divulgación del uso de información de crédito dentro de los 10 días a partir de la fecha en que usted completó la solicitud de seguro.

Esa declaración revelará si la aseguradora obtendrá y utilizará su información de crédito, y enumerará sus derechos legales específicos, incluso describirá:

- la información de crédito que las aseguradoras no pueden usar en contra suya;
- cómo puede usted conseguir que se le hagan excepciones razonables en ciertos casos, excepciones que la aseguradora que utiliza la información de crédito está obligada a hacer cuando ciertas circunstancias de la vida afectan negativamente el historial de crédito, por ejemplo: un divorcio, fallecimiento de un familiar cercano o robo de identidad;
- el aviso\* que la aseguradora debe enviarle cuando hace una decisión basada en su información de crédito que negativamente afecta su habilidad para obtener o mantener el seguro o requiere que usted pague una prima más alta; y

- cómo puede usted disputar la información de crédito y requerir que la aseguradora reclasifique su póliza si la tarifa fue aumentada debido a información de crédito incorrecta o no verificable.

\* El aviso tiene que incluir una descripción de hasta cuatro factores primarios que influenciaron la decisión de la aseguradora. Terminos generalizados tales como "poor credit rating" (credito inestable) no es suficiente.

Las aseguradoras tienen que usar la forma de Declaración de Divulgación del Uso de Información de Crédito (CD-1) adoptada por el Comisionado o una forma equivalente que antes de usar hayan registrado en TDI. La forma CD-1 se encuentra en nuestro sitio electrónico [www.tdi.state.tx.us/company/pccrtdts.html](http://www.tdi.state.tx.us/company/pccrtdts.html) o puede pedirla llamando al 1-800-252-3439. En nuestro sitio electrónico [www.tdi.state.tx.us/commish/credit.html](http://www.tdi.state.tx.us/commish/credit.html) encontrará más datos sobre el uso que hacen las aseguradoras de la información de crédito.

### **Lo que debe saber para ejercer sus derechos**

**35. PRESENTACIÓN DE QUEJAS.** Si tiene una queja en contra de alguna aseguradora o respecto a algún asunto de seguros usted tiene derecho a presentarla ante TDI, y tiene derecho a que rápidamente se investigue y se le dé una respuesta. Para que esto suceda, usted puede:

- Llamar a TDI, a la *Línea de Ayuda al Consumidor* 1-800-252-3439, en Austin al 463-6515. Servicio en inglés y en español;
- Escribir al Departamento de Seguros de Texas, Consumer Protection (111-1A) P.O. Box 149091, Austin, TX 78714-9091;
- Email a TDI [ConsumerProtection@tdi.state.tx.us](mailto:ConsumerProtection@tdi.state.tx.us);
- Enviar su queja por Fax al (512) 475-1771;
- Descargar o completar la forma de queja en nuestro sitio electrónico <http://www.tdi.state.tx.us>; o
- Llamar a nuestra *Línea de Pedido de Folletos/Forma de Queja* (en servicio las 24 horas) 1-800-599-SHOP (7467), en Austin 305-7211.

**AVISO:** TDI ofrece servicios de intérprete y manuales y folletos en diferentes idiomas y formatos. Las personas que necesitan información en diferentes formatos o idiomas pueden llamar a TDI a la *Línea de Ayuda al Consumidor*.

**36. DERECHO A DEMANDAR.** Si alguna aseguradora infracciona los derechos suyos, usted puede entablarle demanda judicial, incluso en una corte de demandas pequeñas, con o sin abogado.

**37. QUIEN TIENE LA OBLIGACIÓN DE COMPROBAR.** Si usted demanda para recuperar bajo su póliza de seguro la aseguradora es la que está obligada a presentar las pruebas del motivo por el que dice que ejercitó la exclusión, excepción o evasión de cobertura.



**38. SOLICITANDO REGLAMENTOS NUEVOS.** Usted tiene derecho a pedir por escrito que TDI establezca reglamentos, o cambie los reglamentos, respecto a cualquier cuestión de seguros de autos que a usted le interese. Envíe su petición por escrito al Departamento de Seguros de Texas, Attn: Comisionado (113-2A) P.O. Box 149104, Austin, TX 78714-9104.

## **Consumer Bill of Rights Homeowners, Dwelling and Renters Insurance**

**AVISO:** Este documento es un resumen de sus derechos como asegurado. Usted tiene el derecho a llamar a su compañía y pedir una copia de estos derechos en español.

### **What is the Bill of Rights?**

This Bill of Rights is a summary of your rights and does not become a part of your policy. The Texas Department of Insurance (TDI) adopted the Bill of Rights and requires insurance companies to provide you a copy when they issue your policy.

Texas law gives you certain rights regarding your homeowners, dwelling and renters insurance. This Bill of Rights identifies your rights specified by rule or by state statute, but it does not include all your rights. Also, some exceptions to the rights are not listed here. If your agent, company, or adjuster tells you that one of these rights does not apply to you, contact TDI Consumer Protection at 1-800-252-3439 (463-6515 in Austin) (111-1A), P.O. Box 149091, Austin, TX 78714-9091. For a list of the specific law(s) and/or rule(s) summarized in each item of this Bill of Rights, or if you have questions or comments contact the Office of Public Insurance Counsel at 333 Guadalupe, Suite 3-120, Austin, TX 78701 (512-322-4143) or <http://www.opic.state.tx.us>.

This Bill of Rights does not address your responsibilities. Your responsibilities concerning your insurance can be found in your policy. Failure to meet your obligations may affect your rights.

### **Getting information from the Department of Insurance and Your Insurance Company**

1. **INFORMATION FROM TDI.** You have the right to call TDI free of charge at 1-800-252-3439 or 463-6515 in Austin to learn more about:

- your rights as an insurance consumer;
- the license status of an insurance company or agent;
- the financial condition of an insurance company;
- the complaint ratio and type of consumer complaints filed against an insurance company;
- use of credit information by insurance companies, including which insurance companies use it and access to each company's credit scoring model;
- an insurance company's rates filed with the state;
- an insurance company's underwriting guidelines (subject to exemptions in the Public Information Act, also known as the Open Records Act);
- the Texas FAIR Plan, designed to help consumers who have been denied coverage by at least two insurance companies;
- Helpinsure.com, a service to help Texans shop for homeowners insurance;
- the Market Assistance Program (MAP) at 1-888-799-MAPP (6277), designed to help those in underserved areas obtain insurance; and

- other consumer concerns.

You can also find some of this information on the TDI website at <http://www.tdi.state.tx.us>.

**2. INFORMATION FROM YOUR INSURANCE COMPANY.** You have the right to a toll-free number to call your insurance company free of charge with questions or complaints. You can find this number on a notice accompanying your policy. This requirement does not apply to small insurance companies.

### **What you should know before you buy insurance**

**3. PROHIBITED STATEMENTS.** Your insurance company or agent is prohibited from making false, misleading, or deceptive statements to you relating to insurance.

**4. LENDER-REQUIRED INSURANCE.** A lender cannot require you to purchase insurance on your property in an amount that exceeds the replacement cost of the dwelling and its contents as a condition of financing a residential mortgage or providing other financing arrangements for the property, regardless of the amount of the mortgage or other financing arrangements. In determining the replacement cost of the dwelling, a lender cannot include the fair market value of the land on which a dwelling is located.

**5. CREDIT INFORMATION.** An insurance company cannot deny you insurance solely on the basis of credit information. Insurers who use credit information must also consider other underwriting factors independent of credit information when deciding whether to offer coverage. (For additional information see the section of this Bill of Rights entitled *What you should know about insurance companies' use of credit information*.)

**6. APPLIANCE RELATED WATER DAMAGE CLAIMS.** An insurance company cannot deny you insurance or increase your premium based on a prior appliance-related water damage claim if:

- the claim has been properly repaired or remediated; and
- the repair or remediation was inspected and certified unless three such claims have been filed and paid in a three-year period.

NOTE: A claim includes a claim filed by you or a claim filed on your property.

**7. WATER CLAIMS/MOLD DAMAGE OR CLAIMS.** An insurance company cannot deny you insurance based:

- solely on a single prior water damage claim.
- on prior mold damage or a prior mold claim if:
- the damage or claim was properly repaired or remediated; and
- the repair or remediation was inspected and certified.

NOTE: A claim includes a claim filed by you or a claim filed on your property.

8. **PROPERTY CONDITION.** Voluntary Inspection Program: You have the right to have an independent inspection of your property by any person authorized by the Commissioner of Insurance to perform inspections. Once the inspector determines that your property meets certain minimum requirements and issues you an inspection certificate, no insurer may deny coverage based on property conditions without reinspecting your property. If an insurer then denies coverage, the insurer must identify, in writing, the specific problem(s) that makes your property uninsurable. You can find a list of available inspectors on the TDI website at [www.tdi.state.tx.us/consumer/vipcommish.html](http://www.tdi.state.tx.us/consumer/vipcommish.html) or you can contact TDI for the list directly at (512) 322-2259.

9. **SAFETY NET.** You have the right to buy basic homeowners insurance through the Texas Fair Access to Insurance Requirements Plan, also known as the Texas FAIR Plan, if you have been denied coverage by two insurance companies. Your property must meet certain requirements, and eligibility for FAIR Plan coverage must be re-established every two years. You can access a list of insurance agents who are authorized to sell this coverage on the Texas FAIR Plan Association website at [www.texasfairplan.org](http://www.texasfairplan.org) or by calling 1-800-466-6680.

10. **WINDSTORM COVERAGE.** For property located in areas designated by the Commissioner in certain counties on or near the coast, you have the right to buy windstorm and hail coverage from the Texas Windstorm Insurance Association. Your property must meet certain requirements, and the basic coverage is limited to a maximum amount set each year by the Commissioner of Insurance. This right applies whether or not you buy other insurance for your house. In all other counties your homeowners or dwelling policy includes this coverage. You may be able to purchase additional coverage from the Association.

11. **ELECTRONIC PAYMENTS.** If you authorize your insurer to withdraw your premium payments directly from your financial institution, including your escrow account, your insurer cannot increase the amount withdrawn unless:

- the insurer notifies you of the premium increase at least 30 days prior to its effective date and provides a postage paid form you can use to object to the increase; and
- you do not notify the insurer or financial institution that you object to the increase at least 5 days prior to the increase.

This does not apply to premium increases specifically scheduled in the original policy, to increases based on policy changes you request, or to an increase that is less than \$10 or 10% of the previous month's payment.

12. **NOTICE OF REDUCED COVERAGE.** If an insurer uses an endorsement to reduce the amount of coverage provided by your policy, the insurer must give you a written explanation of the change made by the endorsement. The insurer must provide the explanation before the effective date of the new or renewal policy. An insurance company cannot reduce coverage during the policy period unless you request the change. If you request the change, the company is not required to provide notice.

13. **NOTICE OF PREMIUM INCREASE.** If your insurer intends to increase your premium by 10% or more upon renewal, the insurer must send you notice of the rate increase at least 30 days before your renewal date.

14. **EXPLANATION OF DENIAL.** Upon request, you have the right to be told in writing why you have been denied coverage. The written statement must fully explain the decision, including the precise incidents, circumstances, or risk factors that disqualified you. It must also state the sources of information used.

NOTE: The obligation to provide a written explanation applies to insurance companies directly. An independent agent does not have a specific duty to quote the lowest possible rate to a consumer or to provide a written statement explaining why the agent did not offer the consumer the lowest possible rate.

15. **RATE DIFFERENTIAL WITHIN A COUNTY.** If an insurer subdivides a county for the purposes of charging different rates for each subdivision, the difference between the lowest and the highest rate cannot exceed 15% unless actuarially justified.

16. **RIGHT TO PRIVACY.** You have the right to prevent an insurance company, agent, adjuster or financial institution from disclosing your personal financial information to companies that are not affiliated with the insurance company or financial institution. Some examples are income, social security number, credit history and premium payment history.

If you apply for a policy, the insurance company or financial institution must notify you if it intends to share financial information about you and give you at least 30 days to refuse. This refusal is called “opting out.” If you buy a policy, the insurance company or financial institution must tell you what information it collects about you and whether it intends to share any of the information, and give you at least 30 days to opt out. Agents and adjusters who intend to share your information with anyone other than the insurance company or financial institution must give you similar notices.

You can opt out at any time. Your decision to opt out remains in effect unless you revoke it.

These protections do not apply to information:

- publicly available elsewhere;
- insurance companies or financial institutions are required by law to disclose; or
- insurance companies or financial institutions must share in order to conduct ordinary business activities.

#### **What you should know about cancellation and nonrenewal**

**Cancellation** means that before the end of the policy period the insurance company:

- terminates the policy;
- reduces or restricts coverage under the policy; or
- refuses to provide additional coverage to which you are entitled under the policy.

**Refusal to renew** and **non-renewal** mean the policy terminates at the end of the policy period.

The **policy period** is shown on the declarations page at the front of your policy.

**17. LIMITATION ON CANCELLATION FOR HOMEOWNERS AND RENTERS POLICIES.** After your initial homeowners or renters policy with your company has been in effect for 60 days or more, that insurance company cannot cancel your policy unless:

- you don't pay your premium when due;
- you file a fraudulent claim;
- there is an increase in the hazard covered by the policy that is within your control and results in an increase in the policy premium; or
- TDI determines continuation of the policy would result in violation of insurance laws.

If your policy has been in effect for less than 60 days, your insurance company cannot cancel your policy unless:

- one of the reasons listed above applies;
- the insurance company identifies a condition that:
- creates an increase in hazard;
- was not disclosed on your application; and
- is not the subject of a prior claim; or
- the insurance company rejects a required inspection report within 10 days after receiving the report. The report must be completed by a licensed or authorized inspector and cannot be more than 90 days old.

**18. LIMITATION ON CANCELLATION FOR DWELLING POLICIES.** After your initial dwelling policy with your company has been in effect for 90 days, that insurance company cannot cancel your policy unless:

- you don't pay your premium when due;
- you file a fraudulent claim;
- there is an increase in the hazard covered by the policy that is within your control and results in an increase in the policy premium; or
- TDI determines continuation of the policy would result in violation of insurance laws.

**19. NOTICE OF CANCELLATION.** To cancel your policy, your insurance company must mail notice at least 10 days prior to cancellation. Your policy may provide for even greater notice.

**20. POLICYHOLDER'S RIGHT TO CANCEL.** You have the right to cancel your policy at any time and receive a refund of the remaining premium.

**21. CHANGE IN MARITAL STATUS.** If your marital status changes, you have the right to continue your insurance coverage. You have a right to a new policy in your name that has coverages which most nearly approximate the coverages of your prior policy, including the same expiration date. The insurance company cannot date the new policy so that a gap in coverage occurs.

**22. *USE OF CLAIMS HISTORY TO NONRENEW.*** Your insurance company cannot use claims you filed as a basis to non-renew your policy unless:

- you file three or more claims in any 3-year period; and
- your insurer notified you in writing after the second claim that filing a third claim could result in non-renewal of your policy.

In determining the number of claims filed, your insurance company cannot include:

- claims for damage from natural causes, including weather-related damage;
- appliance-related water damage claims where the repairs have been inspected and certified; or
- claims filed but not paid or payable under the policy.

NOTE: An insurance company can count appliance-related claims if 3 or more such claims are filed and paid within a 3-year period.

**23. *USE OF CREDIT INFORMATION TO NONRENEW.*** An insurance company cannot refuse to renew your policy solely on the basis of credit information. Insurers who use credit information must also consider other underwriting factors independent of credit information when deciding whether to renew coverage. (For additional information see the section of this Bill of Rights entitled *What you should know about insurance companies' use of credit information.*)

**24. *NOTICE OF CHANGE IN POLICY FORM.*** Your insurer must notify you in writing of any difference between your current policy and each policy offered to you when the policy renews.

**25. *NOTICE OF NONRENEWAL.*** If the insurance company does not mail you notice of nonrenewal at least 30 days before your policy expires, you have the right to require the insurance company to renew your policy.

**26. *EXPLANATION OF CANCELLATION OR NONRENEWAL.*** Upon request, you have the right to a written explanation of an insurance company's decision to cancel or non-renew your policy. The written statement must fully explain the decision, including the precise incidents, circumstances, or risk factors that disqualified you. It must also state the sources of information used.

#### **What you should know when you file a claim**

**27. *FAIR TREATMENT.*** You have the right to be treated fairly and honestly when you make a claim. If you believe an insurance company has treated you unfairly, call the Department of Insurance at 1-800-252-3439 (463-6515 in Austin) or download a complaint form from the TDI at <http://www.tdi.state.tx.us>. You can complete a complaint form on-line via the Internet or fax it to TDI at 512-475-1771.

28. **SETTLEMENT OFFER.** You have the right to reject any settlement amount, including any unfair valuation, offered by the insurance company. You have the right to have your home repaired by the repair person of your choice.

29. **EXPLANATION OF CLAIM DENIAL.** Your insurance company must tell you in writing why your claim or part of your claim was denied.

30. **TIMEFRAMES FOR CLAIM PROCESSING AND PAYMENT.** When you file a claim on your own policy, you have the right to have your claim processed and paid promptly. If the insurance company fails to meet required claims processing and payment deadlines, you have the right to collect 18% annual interest and attorney's fees in addition to your claim amount.

Generally, within **15 calendar days**, your insurance company must acknowledge receipt of your claim and request any additional information reasonably related to your claim. Within **15 business days** (30 days if the company reasonably suspects arson) after receipt of all requested information, the company must approve or deny your claim in writing. The law allows the insurance company to extend this deadline up to **45 days** if it notifies you that more time is needed and tells you why.

After notifying you that your claim is approved, your insurance company must pay the claim **within 5 business days**.

If your claim results from a weather-related catastrophe or other major natural disaster as defined by TDI, your insurance company may take 45 additional days to approve or deny your claim and 15 additional days to pay your claim.

31. **RELEASE OF CLAIM FUNDS.** Often an insurance company will make a claim check payable to you and your mortgage company or other lender and will send it to the lender. In that case, the lender must notify you within 10 days of receipt of the check and tell you what you must do to get the funds released to you.

Once you request the funds from the lender, within 10 days the lender must:

- release the money to you; or
- tell you in specific detail what you must do to get the money released.

If the lender does not provide the notices mentioned above or pay the money to you after all requirements have been met, the lender must pay you interest on the money at 10% per year from the time the payment or the notices were due.

32. **NOTICE OF LIABILITY CLAIM SETTLEMENT.** Your insurance company must notify you if it intends to pay a liability claim against your policy. The company must notify you in writing of an initial offer to compromise or settle a claim against you no later than the 10th day after the date the offer is made. The company must notify you in writing of any settlement of a claim against you no later than the 30th day after the date of the settlement.



33. **INFORMATION NOT REQUIRED FOR CLAIM PROCESSING.** You have the right to refuse to provide your insurance company with information that does not relate to your claim. In addition, you may refuse to provide your federal income tax records unless your insurer gets a court order or your claim involves lost income or a fire loss.

**What you should know about prohibited discrimination**

34. **PROTECTED CLASSES.** An insurance company cannot discriminate against you by refusing to insure you; limiting the amount, extent or kind of coverage available to you; charging you a different rate for the same coverage; or refusing to renew your policy:

- because of race, color, religion, gender, marital status, disability or partial disability, or national origin; or
- unless justified by actual or anticipated loss experience, because of age or geographic location.

35. **AGE OF HOUSE.** An insurance company cannot refuse to insure your property based on the age of your house. However, an insurance company may refuse to sell you insurance coverage based on the condition of your property, including the condition of your plumbing, heating, air conditioning, wiring and roof.

36. **VALUE OF PROPERTY.** An insurance company cannot refuse to insure your property because the value is too low or because the company has established minimum coverage amounts.

37. **UNDERWRITING GUIDELINES.** Underwriting guidelines may not be unfairly discriminatory and must be based on sound actuarial principles.

38. **EQUAL TREATMENT.** Unless based on sound actuarial principles, an insurance company may not treat you differently from other individuals of the same class and essentially the same hazard. If you sustain economic damages as a result of such unfair discrimination, you have the right to sue that insurance company in Travis County District Court.

If your suit prevails, you may recover economic damages, court costs and attorney and necessary expert witness fees. If the court finds the insurance company knowingly violated your rights, it may award up to an additional \$25,000 per claimant.

You must bring the suit on or before the second anniversary of the date you were denied insurance or the unfair act occurred or the date you reasonably should have discovered the occurrence of the unfair act. If the court determines your suit was groundless and you brought the lawsuit in bad faith, or brought it for the purposes of harassment, you will be required to pay the insurance company's court costs and attorney fees.

### **What you should know about insurance companies' use of credit information**

39. **REQUIRED DISCLOSURE.** If an insurance company uses credit information to make underwriting or rating decisions, the company must provide you a disclosure statement within 10 days after receiving your completed application for insurance.

The disclosure indicates whether the insurer will obtain and use your credit information and lists your specific legal rights, including:

- credit information insurance companies cannot use against you;
- how you can get reasonable exceptions that your insurer is required to make to its use of credit information if certain life events, such as divorce, death of a close family member, or identity theft, hurt your credit;
- the notice\* an insurer must send you when making a credit-based decision that harms your ability to get or keep insurance or requires you to pay a higher premium; and
- how you can dispute credit information and require an insurer to re-rate your policy if the rate was increased because of inaccurate or unverifiable credit information.

\* The notice must include a description of up to four primary factors that influenced the action taken by the insurer. Generalized terms such as "poor credit rating" are not sufficient.

Insurers must use the disclosure form (CD-1) adopted by the Commissioner or an equivalent disclosure form filed prior to use with TDI. The CD-1 is available at [www.tdi.state.tx.us/company/pccrdtds.html](http://www.tdi.state.tx.us/company/pccrdtds.html) or by calling 1-800-252-3439. Additional information regarding insurers' use of credit information is available at [www.tdi.state.tx.us/commish/credit.html](http://www.tdi.state.tx.us/commish/credit.html).

### **What you should know about enforcing your rights**

40. **FILING COMPLAINTS.** You have the right to complain to TDI about any insurance company and/or insurance matter and to receive a prompt investigation and response to your complaint. To do so, you should:

- call TDI's **Consumer Help Line** at 1-800-252-3439, in Austin 463-6515 for service in both English and Spanish;
- write to the Texas Department of Insurance, Consumer Protection (111-1A), P.O. Box 149091, Austin, Texas 78714-9091;
- e-mail TDI at [ConsumerProtection@tdi.state.tx.us](mailto:ConsumerProtection@tdi.state.tx.us);
- fax your complaint to (512) 475-1771;
- download or complete a complaint form on line from the TDI website at <http://www.tdi.state.tx.us>; or
- call the TDI Publications/Complaint Form order line (24 hours) at 1-800-599-SHOP (7467), in Austin 305-7211.

**NOTE:** TDI offers interpreter services and publications in alternate formats. Persons needing more information in alternate layouts or languages can call the *TDI Consumer Help Line* listed above.

41. ***RIGHT TO SUE.*** If an insurance company violates your rights, you may be able to sue that company in court, including small claims court, with or without an attorney.

42. ***BURDEN OF PROOF.*** If you sue to recover under your insurance policy, the insurance company has the burden of proof as to any application of an exclusion in the policy and any exception to or other avoidance of coverage claimed by the insurer.

43. ***REQUESTING NEW RULES.*** You have the right to ask in writing that TDI make or change rules on any residential property insurance issue that concerns you. Send your written request to: Texas Department of Insurance, Attn: Commissioner (113-2A), P.O. Box 149104, Austin, TX 78714-9104.

Figure 2: 28 TAC §5.9970(d)

## **DECLARACIÓN DE DERECHOS DEL CONSUMIDOR SEGUROS PARA PROPIETARIO DE VIVIENDA, HABITACIÓN E INQUILINO**

**AVISO:** Este documento es un resumen de sus derechos como asegurado. Usted tiene derecho llamar a su aseguradora y pedir una copia en español

### **¿Qué es la Declaración de Derechos?**

Esta Declaración de Derechos es un resumen de sus derechos, no forma parte de su póliza. El Departamento de Seguros de Texas (TDI) adoptó la Declaración de Derechos y exige que la aseguradora adjunte una copia cuando le expide su póliza.

Las leyes de Texas le otorgan ciertos derechos respecto a los seguros para propietario de vivienda, habitación e inquilino. Esta Declaración de Derechos describe los que por reglamento o precepto estatal la ley le otorga, pero no los incluye todos. Tampoco incluye aquí algunas excepciones. Si su agente, aseguradora o ajustador le dice que alguno de estos derechos no le corresponden comuníquese con TDI, Oficina de Protección al Consumidor, 1-800-252-3439 (en Austin 463-6515) (111-1A) P.O. Box 149091, Austin, TX 78714-9091. Para pedir una copia de cualquier ley(es) o reglamento(s) condensados en este documento, o si tiene alguna pregunta o comentario, favor de comunicarse con la Oficina del Asesor Público de Seguros, 333 Guadalupe Street, Suite 3-120, Austin, TX 78701 (512-322-4143) o <http://www.opic.state.tx.us>.

Esta Declaración de Derechos no menciona las responsabilidades que le corresponden a usted, esas están descritas en su póliza. El no cumplir con sus responsabilidades podría afectar sus derechos.

### **Información que puede pedir al Departamento de Seguros de Texas y a su aseguradora**

**1. INFORMACIÓN QUE PUEDE PEDIR A TDI.** Usted tiene derecho a llamar gratis a TDI al 1-800-252-3439, o en Austin al 463-6515 para obtener más información sobre:

- sus derechos como consumidor de seguros;
- el estado de licencia de alguna aseguradora o agente;
- la solidez económica de alguna aseguradora;
- el promedio y tipo de quejas que los consumidores han presentado en contra de alguna aseguradora;
- la manera en que las aseguradoras usan la información de crédito, incluso cuáles la usan y la fórmula que cada aseguradora utiliza para las calificaciones de crédito;
- las tarifas que la aseguradora tiene registradas en el estado;
- los métodos de aseguramiento de la aseguradora (sujeto a las excepciones provistas en la Ley de Información Pública, también conocida como la Ley de Revelación de Datos);
- el Plan Texas FAIR, el cual es un programa diseñado para ayudar a los consumidores a quienes por lo menos dos aseguradoras les han negado cobertura;

- Helpinsure.com, un servicio que ayuda a los habitantes de Texas a encontrar seguro para propietario de vivienda;
- el Programa de Ayuda al Mercado de Seguros (MAP) 1-888-799-MAPP (6277) que ayuda a los consumidores que viven en regiones con escasez de seguros a obtener seguro; y
- otros asuntos de interés al consumidor.

También puede encontrar alguna de esta información en el sitio electrónico de TDI <http://www.tdi.state.tx.us>.

**2. INFORMACIÓN QUE PUEDE PEDIR A SU ASEGURADORA.** Usted tiene derecho a que la aseguradora tenga un número telefónico al que pueda llamar gratis para hacer preguntas o presentar quejas. Este número lo encontrará en un aviso adjunto a su póliza. Las aseguradoras pequeñas no están obligadas a cumplir con este requisito.

### **Lo que debe saber antes de comprar su seguro**

**3. DECLARACIONES PROHIBIDAS.** Su aseguradora y agente tienen prohibido decirle cosas falsas, engañosas o embaucadoras respecto a los seguros.

**4. SEGURO REQUERIDO POR LA FINANCIERA.** La financiera no puede exigirle, como condición para financiar el préstamo de su casa u otros servicios de financiamiento para la propiedad, que usted compre seguro por una cantidad que exceda el costo de reemplazo del inmueble y su contenido, sin importar la suma del préstamo de casa u otros arreglos de financiamiento. Para determinar el costo de reemplazo del inmueble la financiera no puede incluir el valor de mercado del terreno en el que el inmueble está ubicado.

**5. INFORMACIÓN DE CRÉDITO.** La aseguradora no puede negarle seguro basándose únicamente en la información de su historial de crédito. Las aseguradoras que utilizan la información de crédito también tienen que considerar otros factores de aseguramiento independientes a la información de crédito cuando deciden ofrecerle cobertura. (Para más información vea la sección de esta Declaración de Derechos titulada *Sepa lo que las aseguradoras tienen que hacer cuando utilizan la información de crédito*.)

**6. RECLAMACIONES POR DAÑOS DE AGUA RELACIONADOS A APARATOS DOMÉSTICOS.** La aseguradora no puede negarle el seguro o aumentar su prima basándose en una reclamación anterior debido a daños de agua relacionados a aparatos domésticos sí:

- la reclamación debidamente reparó o remedió, y
- la reparación o remedio fue inspeccionado y certificado, a menos que usted haya presentado tres de este tipo de reclamaciones en el transcurso de tres años.

**AVISO:** Esto incluye reclamaciones presentadas por usted o presentadas a cargo de su propiedad.

**7. RECLAMACIONES POR DAÑOS CAUSADOS POR EL AGUA O EL MOHO (HONGOS).** La aseguradora no puede negarle el seguro basándose

- en una sola reclamación anterior presentada por daños causados por el agua.

- en daños previos causados por el moho, o en una reclamación anterior debido al moho si:
- el daño o reclamación debidamente reparó o remedió; y
- la reparación o remedio fue inspeccionado y certificado.

**AVISO:** Esto incluye las reclamaciones presentadas por usted o presentadas a cargo de su propiedad.

**8. CONDICIONES EN LAS QUE SE ENCUENTRA LA PROPIEDAD.** Programa de Inspección Voluntaria: usted tiene derecho a que se le haga a su propiedad una inspección independiente llevada a cabo por cualquier inspector autorizado por el Departamento de Seguros de Texas. Una vez que el inspector determina que la propiedad reúne ciertos requisitos mínimos y expide el certificado de inspección ninguna aseguradora puede negarle la cobertura basándose en las condiciones en que se encuentra la propiedad, sin reinspeccionar la propiedad. Si una aseguradora después le niega la cobertura, la aseguradora tiene que identificar, por escrito, el problema(s) específico(s) que causa que la propiedad no sea asegurable. En el sitio electrónico de TDI puede encontrar una lista de inspectores a su disposición [www.tdi.state.tx.us/consumer/vipcommish.html](http://www.tdi.state.tx.us/consumer/vipcommish.html) o puede llamar directamente a TDI al (512) 322-2259 y pedir la lista.

**9. RED DE SEGURIDAD.** Si dos aseguradoras le han negado cobertura usted tiene derecho a comprar el seguro básico para propietario de vivienda por medio del Plan Acceso Justo a los Seguros en Texas, también conocido como el Texas FAIR Plan. Su propiedad tiene que reunir ciertos requisitos, y la elegibilidad para la cobertura del Texas FAIR Plan tiene que ser reestablecida cada dos años. La lista de agentes de seguros que tienen autorización para vender la cobertura del Texas FAIR Plan la puede encontrar en el sitio electrónico [www.texasfairplan.org](http://www.texasfairplan.org) o puede pedirla al 1-800-466-6680.

**10. COBERTURA CONTRA HURACANES.** Para las propiedades ubicadas en ciertos condados en o cerca de la costa, designados por el Comisionado de Seguros, usted tiene derecho a comprar cobertura contra huracanes y granizo por medio de la Asociación de Seguros Contra Huracanes de Texas. Su propiedad tiene que reunir ciertos requisitos, y la cobertura básica está limitada a la cantidad máxima fijada anualmente por el Comisionado de Seguros. Usted tiene este derecho, compre o no compre otro seguro para su casa. En todos los otros condados las pólizas para propietario de vivienda o habitación incluyen esta cobertura. Es posible que pueda comprar cobertura adicional por medio de la Asociación.

**11. PAGOS ELECTRÓNICOS.** Si usted autoriza que su aseguradora retire los pagos de su prima directamente de su cuenta bancaria, incluso de su cuenta de plica, su aseguradora no puede aumentar la cantidad que retira, a menos que:

- le notifique del aumento de prima mínimo 30 días antes de la fecha en que el aumento entrará en vigor, y le envíe una forma con porte pagado para que usted pueda disputar el aumento, y
- si usted no notifica a la aseguradora o institución bancaria, mínimo cinco días antes de la fecha en que el aumento entrará en vigor, que usted está disputando el aumento.

Esto no aplica a los aumentos de prima específicamente programados en la póliza original, ni a los aumentos debido a cambios que usted solicita en la póliza, o a un aumento que es menos de \$10 o el 10% del pago del mes anterior.

**12. AVISO DE REDUCCIÓN DE COBERTURA.** Si por medio de una cláusula adicional la aseguradora reduce la cobertura de su póliza tiene que darle una explicación por escrito del cambio que por medio de la cláusula adicional le está haciendo. La aseguradora tiene que darle esta explicación antes de la fecha en que la nueva póliza o la renovación de la póliza entra en vigor. La aseguradora no puede reducir la cobertura durante la vigencia de la póliza, a menos que usted solicite el cambio. Si usted solicita el cambio la aseguradora no está obligada a darle aviso.

**13. AVISO DE AUMENTO DE PRIMA.** Si la aseguradora intenta aumentar su prima el 10% o más en la fecha de renovación, la aseguradora tiene que enviarle un aviso mínimo 30 días antes de la fecha de renovación.

**14. EXPLICACIÓN DE RECHAZO.** A petición suya usted tiene derecho a que la aseguradora le diga por escrito el motivo por el que le negó la cobertura. En el aviso por escrito la aseguradora tiene que explicar detalladamente el motivo por el que decidió negarle la cobertura, incluso tiene que decirle los percances precisos, las circunstancias y los factores de riesgo que lo descalificaron. También tiene que decirle las fuentes de información que utilizó.

**AVISO:** La obligación de darle una explicación por escrito le corresponde directamente a la aseguradora. Los agentes independientes no tienen el deber específico de cotizarle la tarifa más baja posible o explicarle por escrito el motivo por el que no le ofrecieron la tarifa más baja posible.

**15. TARIFAS DIFERENTES DENTRO DEL MISMO CONDADO.** Si una aseguradora subdivide un condado con el propósito de cobrar diferentes tarifas en cada subdivisión, la diferencia entre la tarifa más baja y la más alta no puede exceder el 15%, a menos que esté justificado por datos actuariales.

**16. DERECHO A PRIVACIDAD.** Usted tiene derecho a evitar que una aseguradora, agente, ajustador o institución financiera revele los datos económicos personales suyos a compañías que no están afiliadas a la aseguradora o institución bancaria, por ejemplo: su ingreso, número de seguro social, historial de crédito y su historial de pago de primas.

Si usted solicita una póliza, la aseguradora o institución financiera tiene que avisarle si intenta compartir sus datos económicos, y tiene que darle mínimo 30 días para que usted pueda rehusarse a permitir que los revelen. El rehusarse a que revelen sus datos se conoce como "opting out". Si usted compra una póliza, la aseguradora o institución financiera tiene que decirle cual información recaba sobre usted y si intenta compartirla, y tiene que darle mínimo 30 días para que pueda ejercer su "opting out". Los agentes y ajustadores que intentan compartir sus datos con cualquiera ajeno a la aseguradora o institución bancaria también tienen que darle un aviso semejante.

Usted puede ejercer el “opting out” en cualquier momento. Su decisión de “opting out” permanece vigente, a menos que usted la revoque por escrito.

Estas protecciones no aplican a:

- la información que en otros lugares está a disposición del público;
- la información que las aseguradoras o instituciones financieras están obligadas por ley a revelar; o
- la información que las aseguradoras o instituciones financieras tienen que compartir para conducir sus actividades normales de negocios.

### **Lo que debe saber sobre las cancelaciones y no renovaciones**

**Cancelación** significa que antes de terminar la vigencia de la póliza la aseguradora

- termina la póliza;
- reduce o restringe la cobertura de la póliza; o
- se rehúsa a ofrecer cobertura adicional a la que usted tiene derecho bajo la póliza.

**Rehusarse a renovar y no renovación** significa que la póliza termina cuando termina la vigencia de la póliza.

El **período de vigencia de la póliza** está escrito en la página de declaraciones al frente de su póliza.

**17. LIMITACIÓN EN LA CANCELACIÓN DE LAS PÓLIZAS PARA PROPIETARIO DE VIVIENDA O INQUILINO.** Una vez que el período inicial de la póliza para propietario de vivienda o inquilino ha estado en vigor 60 días o más la aseguradora no puede cancelarla a menos que:

- usted no pague la prima en la fecha debida;
- usted presente una reclamación fraudulenta;
- haya un aumento en el riesgo amparado por la póliza, un riesgo que está bajo su control y resulta en un aumento en la prima de la póliza; o
- TDI determina que continuar la póliza infraccionaría las leyes de seguros.

Si su póliza ha estado en vigor menos de 60 días la aseguradora no puede cancelarla a menos que:

- aplique una de las razones arriba mencionadas;
- la aseguradora identifique una situación que:
- está creando un aumento de riesgo;
- no fue revelada en la solicitud de seguro; y
- no es sujeto de una reclamación previa; o
- la aseguradora rechaza un reporte de inspección requerida dentro de los 10 días a partir de la fecha en que recibe el reporte. El reporte tiene que haber sido llevado a cabo por un inspector autorizado, o con licencia, y no puede ser de más de 90 días.



**18. LIMITACIÓN EN LA CANCELACIÓN DE LAS PÓLIZAS DE HABITACIÓN.** Una vez que el período inicial de la póliza de habitación ha estado en vigor 90 días la aseguradora no puede cancelarla a menos que:

- usted no pague la prima en la fecha debida;
- usted presente una reclamación fraudulenta;
- haya un aumento en el riesgo amparado por la póliza, un riesgo que está bajo su control y resulta en un aumento en la prima de la póliza; o
- TDI determina que continuar la póliza infraccionaría las leyes de seguros.

**19. AVISO DE CANCELACIÓN.** Para cancelarle la póliza la aseguradora tiene que enviarle aviso de cancelación mínimo con 10 días de anticipación. Su póliza podría estipular más tiempo para este tipo de aviso.

**20. EL DERECHO DEL TITULAR DE LA PÓLIZA A CANCELAR LA PÓLIZA.** Usted tiene derecho a cancelar la póliza en cualquier momento, y a recibir reembolso de la prima no devengada.

**21. CAMBIO DE ESTADO MARITAL.** Si su estado marital cambia usted tiene derecho a continuar con cobertura de seguro. Usted tiene derecho a una póliza nueva a su nombre, con coberturas que más se aproximen a las coberturas que tenía bajo su póliza anterior, incluso con la misma fecha de vencimiento. La aseguradora no puede fechar la póliza nueva de manera que entre la póliza anterior y la póliza nueva ocurra un lapso de cobertura.

**22. USO DEL HISTORIAL DE RECLAMACIONES PARA NO RENOVAR.** Su aseguradora no puede usar, como base para no renovar su póliza, las reclamaciones que usted a presentado, a menos que:

- Usted presente tres o más reclamaciones en un período de tres años; y
- Su aseguradora le notifique por escrito, después de la segunda reclamación, que la presentación de una tercera reclamación podría causar que no le renueven la póliza.

Para determinar la cantidad de reclamaciones que usted ha presentado la aseguradora no puede incluir:

- las reclamaciones debido a daños por causas naturales, incluso daños causados por el mal tiempo;
- las reclamaciones por daños de agua relacionados a aparatos domésticos cuando las reparaciones han sido inspeccionadas y certificadas; o
- las reclamaciones presentadas pero que no fueron pagadas o pagables bajo la póliza.

**AVISO:** La aseguradora puede contar las reclamaciones respecto a los aparatos domésticos si se han presentado y se han pagado tres o más reclamaciones de este tipo en un período de tres años.

**23. USO DE LA INFORMACIÓN DE CRÉDITO PARA NO RENOVAR.** La aseguradora no puede rehusarse a renovar la póliza basándose únicamente en la información de crédito. Las aseguradoras que utilizan la información de crédito también tienen que considerar otros factores de aseguramiento independientes a la información de crédito cuando deciden si renovar la

póliza. (Para más información vea la sección de esta Declaración de Derechos titulada *Sepa lo que las aseguradoras tienen que hacer cuando utilizan la información de crédito.*)

**24. AVISO DE CAMBIOS EN LA COBERTURA.** Cuando la aseguradora le renueva la póliza tiene que avisarle por escrito sobre cualquier diferencia entre la póliza actual que usted ya tiene y cualquier otra póliza que le está ofreciendo. En ciertos casos la aseguradora también tiene que darle una comparación entre la póliza que le está ofreciendo y las pólizas adoptadas por el Comisionado de Seguros.

**25. AVISO DE NO RENOVACIÓN.** Si la aseguradora no le envía por correo un aviso de no renovación mínimo 30 días antes del vencimiento de la póliza usted tiene derecho a exigir que la aseguradora le renueve la póliza.

**26. EXPLICACIÓN DE CANCELACIÓN O NO RENOVACIÓN.** Usted tiene derecho, sujeto a que lo solicite, a que la aseguradora le explique el motivo por el cual decidió cancelar o no renovar la póliza. La explicación por escrito tiene que ser totalmente completa, incluyendo los incidentes precisos, las circunstancias o los factores de riesgo que lo descalificaron. También tiene que describir las fuentes de información que la aseguradora utilizó.

#### **Lo que debe saber cuando presenta una reclamación**

**27. TRATO JUSTO.** Usted tiene derecho a que lo traten justa y honestamente cuando presenta una reclamación. Si cree que una aseguradora lo ha tratado injustamente llame al Departamento de Seguros de Texas al 1-800-252-3439 (en Austin 463-6515) o descargue una forma de queja del sitio electrónico de TDI <http://www.tdi.state.tx.us>. Puede llenar la forma directamente en nuestro sitio electrónico o enviarla por Fax al 512-475-1771.

**28. OFRECIMIENTO DE LIQUIDACIÓN.** Usted tiene derecho a rechazar cualquier cantidad que la aseguradora le ofrece para liquidar su reclamación, incluso cualquier valuación injusta. Usted tiene derecho a que su casa sea reparada por cualquier trabajador que usted escoja.

**29. EXPLICACIÓN DE RECHAZO DE RECLAMACIÓN.** Su aseguradora tiene que decirle por escrito el motivo por el que rechaza la reclamación o parte de la reclamación.

**30. MARCOS DE TIEMPO PARA EL PROCESO Y PAGO DE RECLAMACIONES.** Cuando presenta una reclamación a cargo de su propia póliza usted tiene derecho a que sea procesada y pagada prontamente. Si la aseguradora no cumple con los marcos de tiempo estipulados para el proceso y pago de reclamaciones usted tiene derecho a cobrar interés anual al 18% y honorarios de abogado, además de la suma de su reclamación.

Generalmente, dentro de **15 días de calendario**, su aseguradora tiene que acusar recibo de la reclamación y solicitar cualquier información razonablemente relacionada a la misma. Dentro de **15 días hábiles** (30 días si la aseguradora razonablemente sospecha incendio premeditado) después de recibir toda la información solicitada la aseguradora tiene que aprobar o rechazar la reclamación por escrito. La ley permite que la aseguradora extienda este marco de tiempo hasta **45 días** si le avisa que necesita más tiempo y le explica el motivo.

Después de notificarle que la reclamación ha sido aprobada, la aseguradora tiene que pagarla **dentro de los siguientes 5 días hábiles.**

Si su reclamación es a consecuencia de una catástrofe relacionada al mal tiempo u otro desastre grande de la naturaleza, según definición de TDI, la aseguradora podría tomarse 45 días adicionales para aprobar o rechazar la reclamación, y 15 días adicionales para pagarla.

**31. EL COBRO DE LOS PAGOS DE LA RECLAMACIÓN.** Con frecuencia la aseguradora expedirá el cheque de la reclamación a nombre de usted y de la hipotecaria (o financiera) y lo enviará directamente a la financiera. En ese caso la financiera tiene que notificarle dentro de 10 días a partir de la fecha en que recibe el cheque, y explicarle lo que tiene que hacer para retirar los fondos.

Una vez que usted solicita los fondos la financiera debe, dentro de los siguientes diez días:

- permitir que usted retire el dinero; o
- explicarle en detalle lo que tiene que hacer para retirar el dinero.

Si la financiera no le da los avisos arriba mencionados, o no le paga el dinero después que usted ha cumplido con los requisitos, la financiera tiene que pagarle el 10% de interés anual sobre los fondos, a partir de la fecha en que el pago o los avisos debieron haberse hecho.

**32. AVISO DE PAGO DE RECLAMACIÓN POR RESPONSABILIDAD CIVIL.** Su aseguradora tiene que darle aviso si intenta pagar una reclamación de responsabilidad civil a cargo de su póliza. La aseguradora tiene que avisarle por escrito sobre cualquier ofrecimiento inicial que está haciendo para resolver o liquidar la reclamación en contra suya, y tiene que avisarle a más tardar el décimo día a partir de la fecha en que hizo el ofrecimiento. La aseguradora tiene que avisarle por escrito cuando liquida una reclamación en contra suya, y tiene que avisarle a más tardar el treintavo día a partir de la fecha en que hace la liquidación.

**33. INFORMACIÓN NO REQUERIDA PARA EL PROCESO DE RECLAMACIÓN.** Usted tiene derecho a rehusarse a dar a la aseguradora información ajena a la reclamación. Además, usted puede rehusarse a darle sus reportes de declaración de impuestos, a menos que la aseguradora obtenga una orden judicial o su reclamación sea respecto a la pérdida de ingresos o debido a un incendio.

#### **Lo que debe saber sobre lo que está prohibido en cuestión de discriminación**

**34. SECTORES PROTEGIDOS.** La aseguradora no puede discriminar en contra suya al rehusarse a asegurarlo, limitarle la cantidad, clase o grado de cobertura a disposición suya, tampoco puede cobrarle una tarifa diferente por la misma cobertura o rehusarse a renovarle la póliza debido a

- su raza, color, religión, sexo, estado marital, discapacidad o discapacidad parcial, u origen nacional; o
- a menos que lo justifique con una experiencia de pérdidas reales o anticipadas, tampoco lo puede discriminar por su edad o ubicación geográfica.

**35. ANTIGÜEDAD DE LA CASA.** La aseguradora no puede rehusarse a asegurar la propiedad debido a la antigüedad del inmueble. Pero, la aseguradora podría rehusarse a venderle la cobertura de seguro basándose en las condiciones en las que se encuentra, incluso las condiciones en que se encuentra la plomería, sistemas de calefacción y aire acondicionado, alambrado y techo.

**36. VALOR DE LA PROPIEDAD.** La aseguradora no puede rehusarse a asegurar su propiedad porque el valor es muy bajo o porque la aseguradora ha establecido cantidades mínimas de cobertura.

**37. GUIAS DE ASEGURAMIENTO.** Las guías de aseguramiento no pueden ser injustamente discriminatorias y tienen que estar basadas en principios sólidos de actuario.

**38. TRATO UNIFORME.** A menos que se base en principios sólidos de actuario, la aseguradora no puede tratarlo de manera diferente a como trata a otros individuos de la misma clase y que esencialmente presentan los mismos riesgos. Si usted sostiene pérdidas económicas como resultado de este tipo de discriminación tiene derecho a demandar a la aseguradora en un juzgado de distrito del Condado de Travis.

Si el veredicto es a su favor podría recuperar sus pérdidas económicas, los costos de la corte y los honorarios de su abogado y de los testigos peritos necesarios. Si el juez determina que la aseguradora a sabiendas infraccionó sus derechos también podría dictar que se le pague a cada reclamante hasta la cantidad de \$25,000.

La demanda la tendría que presentar a más tardar para el segundo aniversario de la fecha en que la aseguradora le negó el seguro o la acción injusta ocurrió o la fecha en que usted razonablemente debió haber descubierto que la acción injusta ocurrió. Si el juez determina que la demanda no tiene fundamento o que la presentó de mala fe o con propósitos de acoso, usted estará obligado a pagar los costos de la corte y los honorarios de abogado de la aseguradora.

#### **Sepa lo que las aseguradoras tienen que hacer cuando utilizan la información de crédito**

**39. LA ASEGURADORA ESTÁ OBLIGADA A AVISARLE.** Si la aseguradora utiliza información de crédito para hacer decisiones de aseguramiento o clasificación de póliza, la aseguradora está obligada a darle una declaración de divulgación del uso de información de crédito dentro de los 10 días a partir de la fecha en que usted completó la solicitud de seguro.

Esa declaración revelará si la aseguradora obtendrá y utilizará su información de crédito, y enumerará sus derechos legales específicos, incluso describirá:

- la información de crédito que las aseguradoras no pueden usar en contra suya;
- cómo puede conseguir que se le hagan excepciones razonables en ciertos casos, excepciones que la aseguradora que usa información de crédito está obligada a hacer cuando ciertas circunstancias de la vida afectan negativamente el historial de crédito, por ejemplo: un divorcio, fallecimiento de un familiar cercano o robo de identidad;

- el aviso\* que la aseguradora debe enviarle cuando hace una decisión basada en su información de crédito que negativamente afecta su habilidad para obtener o mantener el seguro o requiere que usted pague una prima más alta; y
- cómo puede usted disputar la información de crédito y requerir que la aseguradora reclasifique su póliza si la tarifa fue aumentada debido a información de crédito incorrecta o no verificable.

\* El aviso tiene que incluir una descripción de hasta cuatro factores primarios que influenciaron la decisión de la aseguradora. Terminos generalizados tales como "poor credit rating" (credito inestable) no es suficiente.

Las aseguradoras tienen que usar la forma de Declaración de Divulgación del Uso de Información de Crédito (CD-1) adoptada por el Comisionado o una forma equivalente que antes de usar hayan registrado en TDI. La forma CD-1 se encuentra en nuestro sitio electrónico [www.tdi.state.tx.us/company/pccrdtds.html](http://www.tdi.state.tx.us/company/pccrdtds.html) o puede pedirla al 1-800-252-3439. En nuestro sitio electrónico [www.tdi.state.tx.us/commish/credit.html](http://www.tdi.state.tx.us/commish/credit.html) encontrará más datos sobre el uso de la información de crédito.

### **Lo que debe saber para ejercer sus derechos**

**40. PRESENTACIÓN DE QUEJAS.** Si tiene una queja en contra de alguna aseguradora o respecto a algún asunto de seguros usted tiene derecho a presentarla ante TDI, y tiene derecho a que rápidamente se investigue y se le dé una respuesta. Para que esto suceda, usted debe:

- llamar a TDI, *Línea de Ayuda al Consumidor* 1-800-252-3439, en Austin 463-6515. Servicio en inglés y en español;
- escribir al Departamento de Seguros de Texas, Consumer Protection (111-1A) P.O. Box 149091, Austin, TX 78714-9091;
- email a TDI [ConsumerProtection@tdi.state.tx.us](mailto:ConsumerProtection@tdi.state.tx.us);
- enviar su queja por Fax al (512) 475-1771;
- descargar o completar la forma de queja en nuestro sitio electrónico <http://tdi.state.tx.us>; o
- llamar a nuestra *Línea de Pedidos de Folletos/Forma Queja* (en servicio 24 horas del día) 1-800-599-SHOP (7467) en Austin 305-7211.

**AVISO:** TDI ofrece servicios de intérprete y manuales y folletos en diferentes idiomas y formatos. Las personas que necesitan información en diferentes formatos o idiomas pueden llamar a TDI a la *Línea de Ayuda al Consumidor*.

**41. DERECHO A DEMANDAR.** Si alguna aseguradora infracciona los derechos que la ley le otorga usted puede entablarle demanda judicial, incluso en una corte de demandas pequeñas, con o sin abogado.

**42. QUIEN TIENE LA OBLIGACIÓN DE LAS PRUEBAS.** Si usted demanda para recuperar bajo su póliza de seguro la aseguradora es la que está obligada a presentar las pruebas del motivo por el que dice que ejercitó la exclusión, excepción o evasión de cobertura.

**43. SOLICITANDO REGLAMENTOS NUEVOS.** Usted tiene derecho a pedir por escrito que TDI establezca reglamentos, o cambie los reglamentos, respecto a cualquier cuestión de seguros para propiedades residenciales que a usted le interese. Envíe su petición al Departamento de Seguros de Texas, Attn: Comisionado (113-2A) P.O. Box 149104, Austin, TX 78714-9104.

## **MEMORANDUM OF UNDERSTANDING**

### **Between the Texas Department of Criminal Justice the Department of State Health Services (DSHS) Local Mental Health/Mental Retardation Authorities and Community Supervision and Corrections Departments**

For the purpose of establishing a continuity of care system for offenders with mental illness or mental retardation (mental impairments); the Texas Department of Criminal Justice (TDCJ); Department of State Health Services (DSHS); local Mental Health Authorities/Mental Retardation Authorities in Texas; and local Community Supervision and Corrections Departments (CSCDs) (The Entities) agree to the following:

#### **1. AUTHORITY AND PURPOSE:**

Texas Health and Safety Code, §614.013 authorizes TDCJ, DSHS, local MHMR authorities, and CSCDs to establish a Memorandum of Understanding (MOU) that identifies methods for:

- identifying offenders with mental impairments in the criminal justice system and collecting and reporting prevalence rate data to the Texas Correctional Office on Offenders with Medical and Mental Impairments (TCOOMMI);
- developing interagency rules, policies, procedures, and standards for the coordination of care of and the exchange of information on offenders with mental impairments by local and state criminal justice agencies, Department of State Health Services, local mental health or mental retardation authorities, the Commission on Jail Standards, and local jails;
- identifying the services needed by offenders with mental impairments to reenter the community successfully; and
- establishing a process to report implementation activities to TCOOMMI.

#### **2. ALL ENTITIES AGREE TO:**

- a) Follow the statutory provisions in Chapter 614 of the Health and Safety Code relating to the exchange of information (including electronic) about offenders with mental impairments or mental retardation for the purpose of providing or coordinating services among the Entities; and when appropriate include such requirements in any relevant rules, policies or contract/grants.
- b) Develop rules, policies, procedures, regulations or standards that describe the agency's role and responsibility in the continuity of care process for persons with mental impairments and/or mental retardation.

- c) Develop procedures that provide for the preparation and sharing of assessments or diagnostics prior to the imposition of community supervision, incarceration, or parole, and the transfer of such diagnostics between local and state entities described in this agreement.
- d) Participate in cross training or educational events targeted for improving each agency's knowledge and understanding of the criminal justice, and MHMRA systems' roles and responsibilities.
- e) Inform each other of any proposed policy, procedure, standard or rule changes which could affect the continuity of care system with each agency afforded thirty (30) days after receipt of proposed change(s) to respond to the recommendations prior to the adoption.
- f) Provide written status reports to TCOOMMI on the implementation of initiatives outlined in this MOU on a routine basis, but not less than once a year.
- g) Actively seek federal funds to operate or expand the service capability to include local and state criminal justice entities contracting with the public mental health system for the purpose of maximizing Medicaid and other entitlements.

3. TDCJ THROUGH ITS DIVISIONS SHALL:

- a) Cross reference offender database to the CARE system and make information available to the CSCDs on a monthly basis.
- b) Develop standards for specialized mental health caseloads and provide training/technical assistance to specialized officers on a routine basis.
- c) Establish a process for cross-referencing data on CID inmates with the DSHS CARE system on a weekly basis. This process will include an internal mechanism for distributing the information to the appropriate division(s), contract entities or other providers as deemed necessary and allowed by law.
- d) Develop a process to ensure that any psychiatric, diagnostic or treatment information pertaining to offenders will be provided to relevant local and state criminal justice, mental health or other contract providers prior to release from custody.
- e) Ensure that offenders being released from institutional facilities have access to a ten-day supply of medications upon their release.
- f) Establish an internal procedure in cooperation with TCOOMMI to review Motion to Revoke cases (blue warrants) involving any parolee with a mental impairment. This review will address interventions that have been made or should be made prior to final revocation action.
- g) Report implementation activities to TCOOMMI on a quarterly basis.



4. DSHS SHALL:

- a) Develop, in cooperation with TCOOMMI, continuity of care rules specific to juveniles or adults with mental impairments and/or mental retardation who are involved in the criminal justice system.
- b) Notify in accordance with DSHS Rules, the local mental health authority and TCOOMMI, of a 46.B defendant's release from a state facility to the committing jurisdiction after restoration of competency has been determined.
- c) Include in the performance contract requirements for local MHMR authorities to adhere to and implement the activities outlined in the MOU, including statutory provisions specific to sharing of information, and cross-referencing data with local and state correctional, juvenile justice and criminal justice entities.
- d) Respond to TDCJ's weekly data requests to cross-reference offender data to the CARE system and provide match information within 7 days.
- e) Provide quarterly reports to TCOOMMI on the status of MOU implementation activities.

5. COMMUNITY SUPERVISION AND CORRECTIONS DEPARTMENTS ARE RESPONSIBLE FOR THE FOLLOWING ACTIVITIES:

- a) Submit to the local MHMR Authorities a list of offenders who are being supervised (i.e., pre-trial, if applicable; deferred adjudication or placed on community supervision) by the department on a schedule mutually agreed upon by the department and the local MHMR authority. The initial list submitted should include all offenders on some form of supervision in order to establish a baseline. All lists thereafter will consist of new and/or deleted cases during the period being reported.
- b) Facilitate the coordination of supervision with local MHMR authorities or other treatment providers. This will include:
  - joint staffings of mutual offender/clients to review compliance to treatment and supervision;
  - input on modifications of conditions;
  - coordination with treatment providers on imposing new conditions, sanctions or motion to revoke/adjudicate in order to explore all possible alternatives to incarceration; and
  - coordination on the development of a joint supervision and treatment plan if governing standards for the respective participants can be adhered to in the proposed plan.

- c) Provide technical assistance and training to local MHMR staff on criminal justice issues specific to community supervision.
  - d) Participate in quarterly meetings with the MHMR Executive Director(s) and/or his/her designee to review the implementation of MOU activities and to document status.
  - e) Contract with the local MHMR authorities for mental health/mental retardation assessments or other treatment services in order to minimize duplication of effort and maximize Medicaid or other federal benefits.
6. DSHS WILL REQUIRE THE LOCAL MHMR AUTHORITIES THROUGH THE PERFORMANCE CONTRACTS TO PERFORM THE FOLLOWING ACTIVITIES:
- a) Provide to the CSCD the name of the designated staff member who serves as the contact for all criminal justice referrals and other related issues (i.e., obtaining client information, records or assessments).
  - b) Facilitate the coordination of supervision with the CSCD personnel that will include:
    - joint staffings of mutual offender/clients to review compliance to treatment and supervision;
    - input on modifications of conditions;
    - coordination with CSCD personnel on imposing new conditions, sanctions and/or motion to revoke/adjudicate in order to explore all possible alternatives to incarceration; and
    - coordination on the development of a joint supervision and treatment plan if governing standards for the respective participants can be adhered to in the proposed plan.
  - c) Establish a process for cross-referencing probation and/or local inmate jail lists with the DSHS CARE system. Progress toward or obstacles to complying with this MOU activity will be reported to TCOOMMI with an explanation of obstacles and recommendations for correction. If a process cannot be established electronically, an alternative should be developed that will establish a referral and reporting system between the center and local CSCDs and jails in their catchment area.
  - d) Coordinate with the jail on those persons incarcerated who have been returned to the local jail under a Section 46.B, Code of Criminal Procedure commitment, in accordance with TCOOMMI contract requirements with the local MHMR authority.
  - e) Designate a continuity of care contact person for all 46.B commitments to serve as the primary liaison between local MHMR authorities, jails and TCOOMMI.

- f) Participate in quarterly meetings with the CSCD Director or his/her designee to review the implementation of MOU activities and to document status.
- g) Offer or provide technical assistance and training to the CSCD and other criminal justice entities (pre-trial, jail, courts) on mental health and related issues.
- h) Provide written quarterly reports to TCOOMMI and the DSHS governing body on the implementation and status of MOU activities as outlined in this section. These reports will satisfy reporting requirements in Section 2 of this MOU.

7. REVIEW AND MONITORING:

- a) This MOU shall be adopted by the Department of State Health Services, the Texas Department of Criminal Justice, and local CSCDs. Subsequent to adoption, all parties must provide status reports to TCOOMMI. Amendments to this MOU may be made at any time by mutual agreement of the parties.
- b) TCOOMMI will serve as the dispute resolution mechanism for conflicts concerning this MOU at both the local and statewide level.
- c) TCOOMMI, in coordination with each state agency identified, shall develop a standardized process for collecting and reporting the MOU implementation outcomes by local and state criminal justice agencies and local mental health or mental retardation authorities. The findings of these reports shall be submitted to TCOOMMI by September 1 of each even-numbered year and shall be included in recommendations to the legislature in TCOOMMI's biennium report.

8. RENEWAL:

This agreement shall be renewed annually by mutual agreement of all the parties.

**Certification**

This Memorandum of Understanding is adopted to be effective \_\_\_\_\_ 2005.

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Brad Livingston, Executive Director  
Texas Department of Criminal Justice

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Eduardo Sanchez, MD, MPH Commissioner  
Department of State Health Services

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Local CSCD

# IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

## Automobile Theft Prevention Authority

Request for Grant Applications Under the Automobile Theft Prevention Authority Fund

### Notice of Invitation for Applications:

The Automobile Theft Prevention Authority (ATPA) is soliciting applications for supplemental grants to be awarded for projects to reduce the incidence of economic automobile theft. This grant cycle will be two months in duration, and will begin on July 1, 2005 and end August 31, 2005.

**Law Enforcement/Detection/Apprehension Projects**, to establish motor vehicle theft enforcement teams and other detection/apprehension programs. Priority funding may be provided to state, county, precinct commissioner, general or home rule cities for enforcement programs in particular areas of the state where the problem is assessed as significant. Enforcement efforts covering multiple jurisdictional boundaries may receive priority for funding.

**Prosecution/Adjudication/Conviction Projects**, to provide for prosecutorial and judicial programs designed to assist with the prosecution of persons charged with motor vehicle theft offenses.

**Prevention, Anti-Theft Devices and Automobile Registration Projects**, to test experimental equipment which is considered to be designed for auto theft deterrence and registration of vehicles in the Texas Help End Auto Theft (H.E.A.T.) Program.

**Reduction of the Sale of Stolen Vehicles or Parts Projects**, to provide vehicle identification number labeling, including component part labeling and etching methods designed to deter the sale of stolen vehicles or parts.

**Public Awareness and Crime Prevention/Education/Information Projects**, to provide education and specialized training to law enforcement officers in auto theft prevention procedures, provide information linkages between state law enforcement agencies on auto theft crimes, and develop a public information and education program on theft prevention measures.

### Eligible Applicants:

Current ATPA funded agencies are eligible to apply for supplemental grants for automobile theft prevention assistance projects.

### Grant Offering:

The Texas Automobile Theft Prevention Authority will consider grant application requests from existing grant programs for Equipment Only funding for Fiscal Year 2005.

### Contact Person:

Detailed specifications, including selection process for applicants is available from ATPA.

Contact Susan Sampson, Director,

Texas Automobile Theft Prevention Authority,

4000 Jackson Avenue, Austin, Texas 78731, (512) 374-5101.

### Application Deadline and Submission Requirements:

The Authority must receive applications by 5 p.m., May 6, 2005 or postmarked by May 6, 2005. Each Application must:

1. Include all signed certifications and signature pages.
2. Application must be mailed or delivered to:  
Texas Automobile Theft Prevention Authority,  
4000 Jackson Avenue  
Austin, Texas 78731
3. Submit **one (1) original** and **four (4) copies** of the proposal
4. Facsimile transmissions will not be accepted.

If mailed, applications must be marked "Personal and Confidential" and addressed to the contact person listed above. If delivered, please leave application with the contact person (or designee) at the address listed.

### Selection Process:

Applications will be selected according to rules 57.2, 57.4, 57.7, and 57.14, as published in Title 43 Chapter 57, Texas Administrative Code.

Grant award decisions by ATPA are final and not subject to judicial review.

Grants will be awarded on or before July 1, 2005.

TRD-200501366

Susan Sampson

Director

Automobile Theft Prevention Authority

Filed: March 30, 2005

## Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of March 25, 2005, through March 31, 2005. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on April 6, 2005. The public comment period for these projects will close at 5:00 p.m. on May 6, 2005.

FEDERAL AGENCY ACTIONS:

**Applicant: D. H. Texas Investments, LLC;** Location: The project is located on a 760-acre tract along the Gulf Intracoastal Waterway (GIWW), approximately 4.5 miles west of Port O'Connor, and across Espiritu Santo Bay from the Aransas/Matagorda Island State Park and National Wildlife Refuge, in Calhoun County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port O'Connor, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 747262; Northing: 3145306. Project Description: The applicant proposes to construct a 760-acre, 758-lot waterfront subdivision with 135 acres of lakes and channels. The 135 acres of open water will be constructed by mechanically excavating approximately 3.2 million cubic yards of material and using the excavated material to raise the grade of the lots and streets throughout the subdivision. The channels will have a minimum bottom width of 100 feet at a depth of -6 to -7 feet MLT, requiring 40,000 linear feet of vinyl sheet pile bulkheading. The subdivision will have two 150-foot-wide entrance channels off of the GIWW and a marina with various sizes of covered boat slip structures. The subdivision will have three recreational piers and two pairs of parallel breakwaters placed in the GIWW outside of the Federally maintained channel. This project is proposing to directly impact 61.62 acres of jurisdictional area, with 60.31 acres being wetlands. The impacts to jurisdictional areas are proposed to be offset by creating (41.5 acres) and enhancing (32.4 acres) a total of 73.9 acres of wetlands within the excavated lakes and channels. CCC Project No.: 05-0193-F1; Type of Application: U.S.A.C.E. permit application #23676 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act.

**Applicant: Duncan Oil, Inc.;** Location: The project is located on Pleasure Island, between the existing placement area levee and the perimeter road, in wetlands adjacent to the outfall canal that drains into the Port Arthur Canal, Jefferson County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port Arthur South, Texas. Approximate UTM Coordinates in NAD 27 meters: Zone 15; Easting: 409649; Northing: 3296211. Project Description: The applicant proposes to construct a 400-foot by 175-foot drill site for oil and gas exploration at the M-102427 Well No. 1. The drill site will impact 1.61 acres of estuarine wetlands adjacent to Sabine Lake. There will be 639 cubic yards of excavation and subsequent fill of material required to construct a 3-foot levee around the drill site. Inside the levee, the applicant will place a board mat to serve as a work platform during drilling operations. If the well is productive, the applicant will permanently fill a 0.76-acre area for the production pad, mitigate for the permanent impacts, and restore the 0.85-acre area that will not be used for the production pad. If the well is not productive, the applicant will restore the entire site to pre-project conditions. The site will use a closed loop mud system during drilling. CCC Project No.: 05-0213-F1; Type of Application: U.S.A.C.E. permit application #23721 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Railroad Commission under §401 of the Clean Water Act.

**Applicant: Masters Resources, LLC;** Location: The project is located in the Galveston Bay and East Bay within State Tracts (ST's) 225, 226, 200, 199, 137, and 198 in Galveston and Chambers Counties, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Smith Point, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Pipeline Begins at Easting: 321859; Northing: 3268511; Pipeline reaches channel approximately at Easting: 325460; Northing: 3269082; and Pipeline ends at Easting: 327711; Northing: 3268141; Project Description: The applicant requests authorization to

install a 4-inch pipeline and a 6-inch pipeline across ST's 225, 226, 200, 199, 137, and 198 from the applicant's existing A-2 Platform in ST 225 to serve existing wells and connect to an existing pipeline onshore at Smith Point. The 4-inch and 6-inch lines, approximately 20,085-feet in length, would depart the A-2 Platform in ST 225, bear northeast and terminate onshore near Smith Point. Installation would be accomplished by jetting or trenching to 3-feet minimum cover. No dredging would be required; however, approximately 11,230 cubic yards of material would be temporarily displaced by jetting or trenching operations. Boring would be conducted along the pipeline segments that cross the existing Trinity River Channel and the bay-land transition from Station (STA) 175+95 to the pipeline end point at STA 200+85. No oyster reefs or leases were found within 500 feet of the centerline of the proposed pipeline. CCC Project No.: 05-0214-F1; Type of Application: U.S.A.C.E. permit application #23684 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Railroad Commission under §401 of the Clean Water Act.

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451 - 1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Tammy Brooks, Program Specialist, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200501441

Larry L. Laine

Chief Clerk/Deputy Land Commissioner, General Land Office

Coastal Coordination Council

Filed: April 6, 2005

## Office of Consumer Credit Commissioner

### Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Sections 303.003 and 303.009, Tex. Fin. Code.

The weekly ceiling as prescribed by Sections 303.003 and 303.009 for the period of 04/11/05 - 04/17/05 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup>/credit thru \$250,000.

The weekly ceiling as prescribed by Sections 303.003 and 303.009 for the period of 04/11/05 - 04/17/05 is 18% for Commercial over \$250,000.

<sup>1</sup> Credit for personal, family or household use.

<sup>2</sup> Credit for business, commercial, investment or other similar purpose.

TRD-200501424

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: April 5, 2005

## Texas Commission on Environmental Quality

## Notice of District Petition

Notices mailed March 30 and March 31, 2005

TCEQ Internal Control No. 02022005-D02; HLL Land Acquisitions of Texas, L.P. (Petitioner) filed a petition for creation of Galveston County Municipal Utility District No. 32 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there is one lienholder, United Development Funding, L.P., on the property to be included in the proposed District; (3) the proposed District will contain approximately 169.10 acres located within Galveston County, Texas; and (4) the proposed District is within the corporate limits of the City of La Marque, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. The Petitioner has also provided the TCEQ with a certificate evidencing the consent of United Development Funding, L.P. to the creation of the proposed District. By Ordinance No. 939, effective December 13, 2004, the City of La Marque, Texas gave its consent to the creation of the proposed District. The petition further states that the proposed District will: (1) purchase, construct, acquire, maintain and operate a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain and operate works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the property in the proposed District; and (3) control, abate and amend local storm waters or other harmful excesses of water, as more particularly described in an engineer's report filed simultaneously with the filing of the petition. According to the petition, the Petitioners have conducted a preliminary investigation to determine the cost of the project, and from the information available at the time, the cost of the project is estimated to be approximately \$10,000,000.

TCEQ Internal Control No. 03162005-D01; Kimball Hill Tx Properties, LLC (Petitioner) filed a petition for creation of Fort Bend County Municipal Utility District No. 165 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there is one lienholder, Harris Trust and Savings Bank, on the property to be included in the proposed District, and the Petitioner has provided the TCEQ with a certificate evidencing its consent to the creation of the proposed District; (3) the proposed District will contain approximately 384.7 acres located within Fort Bend County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Houston, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Ordinance No. 2005-94, effective February 8, 2005, the City of Houston, Texas, gave its consent to the creation of the proposed District. The petition further states that the proposed District will: (1) purchase, construct, acquire, maintain and operate a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain and operate works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the property in the proposed District; (3) control, abate and amend local storm waters or other harmful excesses of water; and

(4) purchase, construct, acquire, improve, maintain, and operate additional facilities, systems, plants, and enterprises and parks and recreational facilities consistent with the purposes for which the District is created, all as more particularly described in an engineer's report filed simultaneously with the filing of the petition. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project, and from the information available at the time, the cost of the project is estimated to be approximately \$36,000,000.

## INFORMATION SECTION

The TCEQ may grant a contested case hearing on a petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed district's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

The Executive Director may approve a petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of the notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, the same address. For additional information, individual members of the general public may contact the Office of Public Assistance, at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at [www.tceq.state.tx.us](http://www.tceq.state.tx.us).

TRD-200501447

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: April 6, 2005



## Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **May 15, 2005**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or

considerations that indicate a proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on May 15, 2005**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, comments on the DOs should be submitted to the commission in **writing**.

(1) COMPANY: ABC Group, Inc. dba Come N' Go Mobil; DOCKET NUMBER: 2004-0884-PST-E; TCEQ ID NUMBERS: 71185 and RN101552495; LOCATION: 1401 Cooks Lane, Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b)(1)(C)(ii), by failing to maintain required underground storage tank (UST) records such that they are readily accessible and available for inspection upon request by commission personnel; 30 TAC §334.50(b)(1)(A), and TWC, §26.3475(c), by failing to monitor the USTs for releases at a frequency of at least once every month; and 30 TAC §334.48(c) and §334.50(d)(1)(B)(iii)(I) and (d)(1)(B)(ii) and TWC, §26.3475(c), by failing to conduct effective manual or automatic inventory control procedures; PENALTY: \$12,210; STAFF ATTORNEY: Ann Skowronski, Litigation Division, MC 175, (512) 239-2497; REGIONAL OFFICE: Dallas/Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Bipin Patel dba M & B Food Store; DOCKET NUMBER: 2004-0740-PST-E; TCEQ ID NUMBERS: 69845 and RN101838902; LOCATION: 708 North Raguette, Lufkin, Angelina County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b)(1), by failing to maintain legible copies of all required records regarding the UST system; 30 TAC §334.72, by failing to report to the TCEQ a suspected release from the UST within 24 hours; and 30 TAC §334.74, by failing to report to the TCEQ a suspected release from the UST within 30 days; PENALTY: \$15,000; STAFF ATTORNEY: James Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(3) COMPANY: Colonial Distribution, Inc. dba Wez Mart 1; DOCKET NUMBER: 2003-0388-PST-E; TCEQ ID NUMBERS: 15051 and RN101377950; LOCATION: 6220 Binz Engleman Road, San Antonio, Bexar County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; PENALTY: \$1,050; STAFF ATTORNEY: Sarah Utley, Litigation Division, MC 175, (512) 239-0575; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(4) COMPANY: Eileen Rouke dba Fastop 66; DOCKET NUMBER: 2001-1082-PST-E; TCEQ ID NUMBERS: 0048209 and RN102238706; LOCATION: 1701 West Broadway, Van Horn,

Culberson County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; 30 TAC §334.8(c)(4)(B) and TWC, §26.346(a), by failing to complete and submit self-certification documentation; 30 TAC §334.7(d)(3), by failing to amend, update, or change registration information; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before delivery of a regulated substance into the UST system; and 30 TAC §334.21, by failing to pay UST fees; PENALTY: \$5,000; STAFF ATTORNEY: Benjamin Joseph de Leon, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(5) COMPANY: Hadi H. Jinnah dba Dairy Mart 2; DOCKET NUMBER: 2004-0625-PST-E; TCEQ ID NUMBERS: 67339 and RN102473907; LOCATION: 5112 West Davis Street, Dallas, Dallas County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(d)(1)(B)(ii), (iii)(I), (b)(1)(A), and TWC, §26.3475(a), by failing to meet the release detection requirements for the UST system; and 30 TAC §334.10(b)(1)(B), by failing to maintain in a secure location on the premises of the UST facility legible copies of all required records pertaining to a UST system immediately accessible for reference and use by the UST system operator and immediately available for inspection upon request by agency personnel; PENALTY: \$8,840; STAFF ATTORNEY: Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016; REGIONAL OFFICE: Dallas/Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: Liaquat Hussain dba Huffman Gas & Grocery; DOCKET NUMBER: 2003-0933-PST-E; TCEQ ID NUMBERS: 48837 and RN100918705; LOCATION: 11101 Farm-to-Market Road 1960, Huffman, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; PENALTY: \$3,210; STAFF ATTORNEY: Rebecca Nash Petty, Litigation Division, MC 175, (512) 239-3693; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: Mark Nash dba Nash Landscaping; DOCKET NUMBER: 2002-0693-LII-E; TCEQ ID NUMBER: RN103763934; LOCATIONS: 257, 261, 265, 269, 273, and 277 Fountain Street, El Paso, El Paso County, Texas; TYPE OF FACILITY: landscape irrigation systems; RULES VIOLATED: Texas Occupations Code, §1903.251, by acting as an irrigator or installer without first obtaining a valid certificate of registration; TCEQ Default Order, Docket Number 1997-0422-LII-E, Ordering Provision 2, by continuing to act as an irrigator or installer without obtaining a valid certificate of registration; PENALTY: \$1,875; STAFF ATTORNEY: Rebecca Nash Petty, Litigation Division, MC 175, (512) 239-3693; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(8) COMPANY: Mehmood Lakhani dba C-Store; DOCKET NUMBER: 2002-0751-PST-E; TCEQ ID NUMBERS: 0021877 and RN102360716; LOCATION: 100 North Story Road, Irving, Dallas County, Texas; TYPE OF FACILITY: convenience store with retail



sales of gasoline; RULES VIOLATED: 30 TAC §115.246(7)(A) and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain Stage II records on site at the station and available for review; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to conduct an annual pressure decay test on the Stage II vapor recovery system; 30 TAC §115.242(3)(A), (B), and (4) and THSC, §382.085(b), by failing to ensure that no gasoline leaks, as detected by sampling, sight, sound, or smell existed anywhere in the dispensing equipment; 30 TAC §334.7(d)(3), by failing to provide amended registration for any change or additional information regarding the USTs; 30 TAC §334.8(c)(4)(B) and TWC, §26.346(a), by failing to ensure that the TCEQ UST registration and self-certification form was submitted to the commission in a timely manner; 30 TAC §334.49(a) and TWC, §26.3475(d), by failing to install a method of corrosion protection for the UST system; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum USTs; 30 TAC §334.50(b)(1)(A) and (2), by failing to provide proper release detection for the product piping associated with the UST system and failing to ensure that all tanks were monitored for releases at a frequency of at least once every month; 30 TAC §334.10(b)(1)(B), by failing to provide petroleum storage tank delivery records upon request by the TCEQ; and 30 TAC §334.22(d), by failing to pay outstanding UST fees along with associated late fees and interest; PENALTY: \$17,340; STAFF ATTORNEY: Lindsay Andrus, Litigation Division, MC 175, (512) 239-4761; REGIONAL OFFICE: Dallas/Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: Mohammad Salman dba Jeff's Grocery; DOCKET NUMBER: 2003-1154-PST-E; TCEQ ID NUMBERS: 38836 and RN102457785; LOCATION: 12111 Farm-to-Market Road 3083, Conroe, Montgomery County, Texas; TYPE OF FACILITY: convenience store with retail sales in gasoline; RULES VIOLATED: 30 TAC §334.10(b)(1)(B), by failing to maintain inventory control records on the premises of the facility and immediately accessible and available for inspection; 30 TAC §37.815(a) and (b), by failing to maintain the required financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; and 30 TAC §334.50(d)(1)(B)(ii) and TWC, §26.3475(c), by failing to implement release detection sufficiently accurate to detect a release as small as the sum of 1.0% of the total substance flow-through for the month plus 130 gallons; PENALTY: \$11,500; STAFF ATTORNEY: Gitanjali Yadav, Litigation Division, MC 175, (512) 239-2029; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(10) COMPANY: Sampri Investments, LLC dba Sammy's #4; DOCKET NUMBER: 2003-1292-PST-E; TCEQ ID NUMBERS: 66954 and RN102248127; LOCATION: 9700 Spencer Highway, La Porte, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.48(c), by failing to conduct inventory control regardless of which method of release detection is used; 30 TAC §334.50(b)(1)(A), (d)(4)(A)(i), (ii)(II), and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month not to exceed 35 days between each monitoring; 30 TAC §334.7(d)(3), by failing to provide amended registration for any change or additional information regarding its USTs within 30 days from the date of occurrence of the change or addition or within 30 days of the date on which the owner or operator first became aware of the change or addition; 30 TAC §115.246(3) and (4), and THSC, §382.085(b), by failing to maintain proof of attendance and completion of Stage II

vapor recovery training for each employee and failing to maintain a maintenance log for all repair/replacements conducted at the facility; and 30 TAC §115.242(3)(A) and (B) and THSC, §382.085(b), by failing to provide and maintain the Stage II vapor recovery system in proper operating condition and free of defects; PENALTY: \$20,000; STAFF ATTORNEY: Alfred Okpohworho, Litigation Division, MC R-12, (713) 422-8918; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(11) COMPANY: SRS Investments LLC dba McClouds Grocery; DOCKET NUMBER: 2004-0951-PST-E; TCEQ ID NUMBER: RN101562411; LOCATION: 928 West Main Street, Crowley, Tarrant County, Texas; TYPE OF FACILITY: business with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; PENALTY: \$3,210; STAFF ATTORNEY: Mary Clair Lyons, Litigation Division, MC 175, (512) 239-6996; REGIONAL OFFICE: Dallas/Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-200501443

Paul C. Sarahan

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: April 6, 2005



#### Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **May 15, 2005**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on May 15, 2005**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO should be submitted to the commission in **writing**.

(1) COMPANY: A P G & Z, Inc. dba McKinney Food Store; DOCKET NUMBER: 2002-1016-PST-E; TCEQ ID NUMBER: 49369 and RN102049228; LOCATION: 1117 East McKinney Street, Denton, Denton County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.51(b)(2)(B) and TWC, §26.3475(c)(2), by failing to equip the fill tubes on the underground storage tank (USTs) with spill and overflow prevention equipment to prevent any spilling or overfilling of regulated substances; PENALTY: \$2,000; STAFF ATTORNEY: Jeffrey Huhn, Litigation Division, MC 175, (512) 239-5111; REGIONAL OFFICE: Dallas/Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Advantage Asphalt Products, LTD.; DOCKET NUMBER: 2003-1310-AIR-E; TCEQ ID NUMBERS: 54119L001 and RN102997970; LOCATION: approximately 2.25 miles north of Interstate Highway 40 and Soncy Road and 0.6 miles west of Soncy Road, Amarillo, Potter County, Texas; TYPE OF FACILITY: asphalt plant; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code (THSC), §382.0518(a) and §382.085(b), by failing to obtain a permit, satisfy the conditions for a standard permit, flexible permit, or permit by rule or satisfy the criteria for a de minimis facility, prior to beginning construction of a new facility which may emit air contaminants; PENALTY: \$750; STAFF ATTORNEY: Alfred Okpohworho, Litigation Division, MC R-12, (713) 422-8918; REGIONAL OFFICE: Amarillo Regional Office, 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(3) COMPANY: Algonquin Water Resources of America dba Woodmark Utilities and dba Tall Timbers STP; DOCKET NUMBER: 2004-0677-MWD-E; TCEQ ID NUMBERS: 13000-001, 13168-001, RN101511400, and RN101519981; LOCATION: Highway 346, Tyler and 16459 Neighbors Road, Tyler, Smith County, Texas; TYPE OF FACILITY: domestic wastewater treatment plants; RULES VIOLATED: 30 TAC §305.125(4) and (5) and TWC, §26.121(a), by failing to clean and remediate the area affected by the unauthorized discharge of wastewater; 30 TAC §305.125(5) and §317.3(a), Texas Pollutant Discharge Elimination System (TPDES) Permit Number 13168-001, Operational Requirements, Provision Number 1, and TPDES Permit Number 13000-001, Operational Requirements, Provision Number 1, by failing to ensure that all lift stations are intruder-resistant with controlled access; 30 TAC §305.125(1), TPDES Permit Number 13168-001, Operational Requirements, Provision Number 1, and TPDES Permit Number 13000-001, Operational Requirements, Provision Numbers 1 and 5, by failing to properly maintain the wastewater collection system in a manner to prevent infiltration; 30 TAC §305.125(5) and §317.4(b)(1) and TPDES Permit Number 13000-001, Operational Requirements, Provision Number 1, by failing to properly maintain the wastewater treatment facility's bar screen; 30 TAC §305.125(1) and (5), TWC, §26.121(a), and TPDES Permit Number 13000-001, Permit Conditions 2.g., by failing to prevent sludge from discharging from the wastewater treatment facility; and 30 TAC §305.125(1), TWC, §26.121(a), and TPDES Permit Number 13000-001, Final Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with the permit limits; PENALTY: \$6,345; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(4) COMPANY: City of Domino; DOCKET NUMBER: 2003-1115-PWS-E; TCEQ ID NUMBERS: 0340041 and RN101388866; LOCATION: Farm-to-Market Road 3129, 0.4 miles east of Highway 59 and north of Queen City, Cass County, Texas; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.109(c)(2) and (g) and THSC, §341.033(d), by failing to collect and submit routine

monthly water samples for bacteriological analysis and failing to provide public notice related to its failure to collect and submit samples; and 30 TAC §290.109(c)(3), by failing to submit additional water samples after a routine sample tested positive for bacteria; PENALTY: \$4,063; STAFF ATTORNEY: Sarah Utley, Litigation Division, MC 175, (512) 239-0575; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(5) COMPANY: Coastal Transport Co., Inc.; DOCKET NUMBER: 2003-0246-PST-E; TCEQ ID NUMBER: RN102605282; LOCATION: 12953 Montana, El Paso, El Paso County, Texas; TYPE OF FACILITY: fuel distribution; RULES VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to observe that the owner or operator of the facility had a valid, current delivery certificate issued by the TCEQ covering the UST system prior to depositing a regulated substance into the UST system; PENALTY: \$1,200; STAFF ATTORNEY: Alfred Okpohworho, Litigation Division, MC R-12, (713) 422-8918; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(6) COMPANY: FKD Enterprises Inc. dba Lucky Seven Food Mart; DOCKET NUMBER: 2002-1035-PST-E; TCEQ ID NUMBERS: 44882 and RN101765089; LOCATION: 5925 South Flores, San Antonio, Bexar County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(c)(2)(C) and (4)(C) and TWC, §26.3475, by failing to regularly inspect the cathodic protection system at least once every 60 days to ensure proper operation of the rectifier and other system components and failing to have the cathodic protection system inspected and tested once every three years by a corrosion specialist; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475, by failing to monitor for releases from the UST system at least once per month, not to exceed 35 days; 30 TAC §334.48(c), by failing to conduct effective inventory control and reconciliation on all USTs; and 30 TAC §334.10(b)(1)(B), by failing to maintain records pertaining to the UST system and to provide those records to commission personnel upon request; PENALTY: \$3,600; STAFF ATTORNEY: Barbara L. Klein, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(7) COMPANY: Jasbir Singh dba Rolands Kwik Stop; DOCKET NUMBER: 2004-1461-PST-E; TCEQ ID NUMBERS: 24933 and RN100928555; LOCATION: 6530 West 43rd Street, Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of USTs; PENALTY: \$1,400; STAFF ATTORNEY: Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(8) COMPANY: New Crossing Katy, Inc.; DOCKET NUMBER: 2004-0379-PST-E; TCEQ ID NUMBERS: 70133 and RN101880078; LOCATION: 1350 Pin Oak Road, Katy, Fort Bend County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(c), by failing to monitor pressurized piping and failing to test mechanical line leak detectors at least once a year; and TWC, §26.121(a), by failing to prevent an unauthorized discharge of approximately 1,300 gallons of gasoline into, or adjacent to, the waters in the state from a gasoline spill; PENALTY: \$13,500; STAFF ATTORNEY: Justin Lannen, Litigation Division, MC R-4, (817) 588-5927; REGIONAL OFFICE:

Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(9) COMPANY: Newell Recycling of San Antonio, L.P., Newell Recycling Co., Inc., Newell LTD., Newell Enterprises, Inc., Newell Products, Inc., and Newell International, Inc.; DOCKET NUMBER: 2004-0014-MLM-E; TCEQ ID NUMBERS: BG-0149-O; 30060; BG-0147-S; 38632; BG-0293-G; BG-1092-L; and RN102923976 and RN102601804; LOCATION: 726 Probandt Street and 501 Steves Avenue, San Antonio, Bexar County, Texas; TYPE OF FACILITY: scrap metal shredding and recycling, shredder residue reclamation, metal sorting, and lead battery recovery; RULES VIOLATED: 30 TAC §335.4, by allowing the collection, storage, handling, processing, or disposal of industrial solid waste in such a manner as to cause a discharge or the imminent threat of a discharge into, or adjacent to, water in the state, the creation and maintenance of a nuisance, and/or the endangerment of the public health and welfare; TWC, §26.121, by discharging other waste and/or industrial waste into, or adjacent to, water in the state and/or engaging in activity which in itself, or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution of water in the state; 30 TAC §101.4, by discharging air contaminants that are or may tend to be injurious to or to adversely affect human health or welfare and property, and which interfere with the normal use and enjoyment of property; THSC, §382.085(a) and (b), by emitting air contaminants or performing other activities that have caused or contributed to air pollution and by emitting air contaminants or performing other activities in violation of commission rules; TCEQ Order Docket Number 1998-0235-MLM-E, Provision IV.B.1, by releasing visible emissions from the shredder in excess of 5% opacity for any six-minute period; and TWC, §26.121, by discharging industrial solid waste into, or adjacent to, the waters in the state; PENALTY: \$85,000; STAFF ATTORNEY: David Speaker, Litigation Division, MC 175, (512) 239-2548; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(10) COMPANY: Prince Texas Group, Inc. dba Super Stop No. 11, dba Super Stop No. 12, dba Super Stop No. 13, dba Super Stop No. 16, dba Super Stop No. 18, dba Super Stop No. 19; DOCKET NUMBER: 2002-0698-PST-E; TCEQ ID NUMBERS: 0040084, 0040079, 0040085, 0040077, 0040089, and 0040090; LOCATION: 1125 Jefferson Drive, Port Arthur; 1165 South 11th Street, Beaumont; 2223 Nederland Avenue, Nederland; 1202 Magnolia Avenue, Port Neches; 5480 College Street, Beaumont; 6450 Calder Street, Beaumont, Jefferson County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.245(2)(B) and THSC, §382.085(b), by failing to conduct a full system test within 30 days after the original system was replaced; 30 TAC §115.242(3)(M) and THSC, §382.085(b), by failing to maintain the Stage II system free of any equipment defect that would substantially impair the effectiveness of the system in reducing the refueling vapors; 30 TAC §115.246(1) and THSC, §382.085(b), by failing to have a copy of the applicable California Air Resources Board Executive Order for the vapor recovery system in use; 30 TAC §334.22(a), by failing to pay outstanding UST fees and late fees; 30 TAC §115.246(6) and THSC, §382.085(b), by failing to maintain records of daily inspections of the Stage II system; 30 TAC §115.248(1) and §115.246(4) and THSC, §382.085(b), by failing to make each employee aware of the purpose and correct operation of the vapor recovery equipment and failing to maintain a copy of the Stage II system facility representative certification document; 30 TAC §115.246(7)(A) and THSC, §382.085(b), by failing to make the Stage II system records available immediately upon request by TCEQ representatives; 30 TAC §334.51(b)(2)(C) and TWC, §26.3475(c)(2), by failing to equip each UST with a valve or other device designed to automatically shut off the flow of regulated substances

into the tank when the liquid level in the tank reaches no higher than 95% capacity; 30 TAC §37.815(a) and (b), by failing to demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; 30 TAC §334.48(c), by failing to provide documentation that inventory control for all USTs is being conducted; 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to monitor piping for releases each month; 30 TAC §334.50(b)(2)(A)(i)(III) and TWC, §26.3475(a), by failing to test line leak detectors for proper operation; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the UST system for releases once per month; 30 TAC §334.8(c)(5)(C), by failing to ensure that the designated UST identification number as listed on the UST registration and self-certification form is legibly and permanently affixed in the immediate area of the appropriate fill tube; 30 TAC §334.10(b), by failing to provide requested facility records in a timely manner; 30 TAC §334.45(c)(3)(A), by failing to install and maintain a secure anchor at the base of each UL-listed emergency shutoff valve in a piping system in which regulated substances are conveyed under pressure to an aboveground dispensing unit; PENALTY: \$4,200; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(11) COMPANY: Southwest Tire Disposal, L.L.C.; DOCKET NUMBER: 2001-0725-MSW-E; TCEQ ID NUMBERS: 6200001, RN103043956, and RN104002720; LOCATION: 7282 Doniphan, Canutillo, El Paso County and 1420 North Avenue Y, Lubbock, Lubbock County, Texas; TYPE OF FACILITY: used and scrap tire; RULES VIOLATED: 30 TAC §328.58(b), by failing to properly manifest scrap tires by not including the transporter registration number and transporter's driver's license number; 30 TAC §328.59(a) and §328.60(a), by failing to obtain a scrap tire storage site registration prior to storing more than 500 used or scrap tires on the ground or 2,000 used or scrap tires in trailers; 30 TAC §328.57(c)(3), by failing to transport used and scrap tires to an authorized facility; 30 TAC §328.54(d), by failing to mark scrap tire transportation vehicles with the required transporter's name, place of business, and commission registration number; 30 TAC §328.57(c)(1), by failing to register as a transporter prior to transporting scrap and used tires; 30 TAC §328.59(a) and §328.60(a), by failing to obtain a scrap tire storage site registration prior to storing tire pieces in excess of the weight equivalent of 500 scrap tires on the ground; and 30 TAC §328.58(b), by failing to properly complete the transporter portion of 11 manifests; PENALTY: \$12,800; STAFF ATTORNEY: Lindsay Andrus, Litigation Division, MC 175, (512) 239-4761; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949 and Lubbock Regional Office, 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-7092.

(12) COMPANY: Teresa Salinas dba Tex Mart 3; DOCKET NUMBER: 2004-1009-PST-E; TCEQ ID NUMBERS: 14707 and RN101851111; LOCATION: 7131 New Laredo Highway, San Antonio, Bexar County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; PENALTY: \$2,400; STAFF ATTORNEY: Justin Lannen, Litigation Division, MC R-4, (817) 588-5927; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(13) COMPANY: Texas Transeastern, Inc.; DOCKET NUMBER: 2004-0966-PST-E; TCEQ ID NUMBER: RN100928571; LOCATION: 3112 Pansy Street, Pasadena, Harris County, Texas; TYPE OF

FACILITY: common carrier distributing gasoline to retail gasoline facilities; RULES VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to observe a valid, current delivery certificate prior to depositing a regulated substance into the UST systems; PENALTY: \$10,000; STAFF ATTORNEY: Justin Lannen, Litigation Division, MC R-4, (817) 588-5927; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(14) COMPANY: Tyler Pipe Company, A Division of McWane, Inc.; DOCKET NUMBER: 2003-0618-MLM-E; TCEQ ID NUMBERS: SK-0041-T and RN102679867; LOCATION: off United States Highway 69, approximately four miles north of Loop 323, Smith County, Texas; TYPE OF FACILITY: iron foundries; RULES VIOLATED: 30 TAC §116.115(c), Permit Number 26203, Special Condition Number 11, and THSC, §382.085(b), by failing to operate the coating application system within the limits and specifications set forth by the manufacturer; 30 TAC §116.115(c), Permit Number 26203, Special Condition Number 8, and THSC, §382.085(b), by exceeding the permitted usage limit a total 163 days; 30 TAC §116.115(c), Permit Number 26203, Special Condition Numbers 16, 18, and 20, and THSC, §382.085(b), by failing to exercise good housekeeping practices; 30 TAC §116.115(c), Permit Number 26203, Special Condition Number 14(B), and THSC, §382.085(b), by failing to maintain complete usage records and have them readily available upon request; 30 TAC §116.116(b)(1), Permit Number 26203, and THSC, §382.085(b), by failing to conduct the mixing process in accordance with the representations made in the permit application; 30 TAC §116.110(a), Permit Number 9425, and THSC, §382.0518(a) and §382.085(b), by failing to obtain new source review (NSR) authorization for all emission points and pollutants; 30 TAC §101.20(3) and §116.160, Permit Number 9425, 40 CFR §51.166, and THSC, §382.085(b), by operating the impact molding process without obtaining prevention of significant deterioration (PSD) authorization prior to completing a major modification where the new emission increases in total suspended particulates are greater than or equal to 15 tons per year (tpy) and carbon monoxide (CO) is greater than or equal to 100 tpy; 30 TAC §101.10(b)(2) and THSC, §382.085(b), by failing to accurately report CO emissions; 30 TAC §116.110(a), Permit Number 8157, and THSC, §382.0518(a) and §382.085(b), by operating the Hermann Moldmaster process without obtaining NSR authorization for all emission points and pollutants; 30 TAC §101.20(3) and §116.160; 40 CFR §51.166, Permit Number 8157, and THSC, §382.085(b), by operating the Hermann Moldmaster process without obtaining PSD authorization prior to completing a major modification to the process, causing emission increases in total suspended particulates greater than or equal to 15 tpy and CO greater than or equal to 100 tpy; 30 TAC §101.221(a) and §116.115(c), Permit Number 8157, Special Condition Number 2, Permit Number 4246, Special Condition Number 6, and THSC, §382.085(b), by failing to maintain all air pollution capture and abatement equipment in good working order and operating properly during plant operations; 30 TAC §116.110(a)(1), Permit Number 26516, and THSC, §382.0518(a) and §382.085(b), by failing to represent all emissions generated from the graphite/isopropanol mixing and application operations and the core wash process in its application for an air permit; 30 TAC §116.116(a)(1), Permit Number 45728, and THSC, §382.085(b), by failing to route all volatile organic compounds (VOC) emissions from the impact millroom drying tunnel to a thermal oxidizer; 30 TAC §101.201(a) and THSC, §382.085(b), by failing to notify the TCEQ of an estimated reportable quantity emission event within 24 hours of the event being discovered; 30 TAC §106.144(4) and §116.110(a)(4), Permit by Rule Number 53044, and THSC, §382.085(b), by failing to submit a registration form to the TCEQ prior to relocating the sand storage silo; 30 TAC §116.110(a)(1), and THSC, §382.0518(a) and §382.085(b), by failing

to obtain NSR authorization prior to constructing and operating the particulate matter (PM) stands process line; 30 TAC §116.116(a), Permit Number 22200, and THSC, §382.085(b), by failing to accurately represent the VOC emissions from the 4260 Casting and Coating Process; 30 TAC §305.125(1), TPDES Permit Number 01793, Effluent Limitations and Monitoring Requirements, Provision Number 1, and TWC, §26.121(a)(1), by exceeding the permitted effluent limits for chemical oxygen demand (COD), oil, grease, and Zinc; 30 TAC §319.11(a) and (b), and TPDES Permit Number 01793, Monitoring and Reporting, Provision Number 2, by failing to properly collect and preserve samples in one instance by using approved methods; Mult-Sector General Permit (MSGP) Number TXR05P127, Part III, Section A.3.(b), by failing to conduct a survey of potential non-storm water sources and to test or inspect the storm sewer system for the presence of non-storm water flows; Mult-Sector General Permit (MSGP) Number TXR05P127, Part III, Section A.5.(h), by failing to perform quarterly visual monitoring of the storm water discharge from each of the four storm water outfalls; 30 TAC §116.110(a), Permit Number 222000, and THSC, §382.0518(a) and §382.085(b), by operating the plant without a valid permit; 30 TAC §116.110(a) and THSC, §382.0518(a) and §382.085(b), by exceeding permit by rule emission limits for VOCs at the South Plant Production Finishing Tank and not having other authorization for the emissions; 30 TAC §116.110(a) and THSC, §382.0518(a) and §382.085(b), by failing to verify that actual emissions were within the emission rate represented in the permit application for the Torrit Baghouse; 30 TAC §116.110(a), and THSC, §382.0518(a) and §382.085(b), by failing to obtain NSR authorization for engaging in modifications involving the usage of mag rods and a bubbling pot; 30 TAC §116.160, 40 CFR §51.166, and THSC, §382.085(b), by failing to obtain PSD authorization prior to completing a major modification where the actual to potential emission increases in PM10 are greater than or equal to 15 tpy and CO are greater than or equal to 100 tpy; 30 TAC §116.116, Permit Number 4581, and THSC, §382.0518(a) and §382.085(b), by failing to operate the ductile inoculation fugitive emission collection system on the 65-ton furnace with an efficiency of 99% as represented in the permit amendment application; 30 TAC §116.110(a) and THSC, §382.0518(a) and §382.085(b), by constructing and operating the South Plant Impact Millroom Dip Tank without obtaining a permit or other authorization; 30 TAC §101.201(b), by failing to record and report all of the information required in the final record for the emission events; 30 TAC §116.115(c), TWC, §382.085(b), TCEQ Air Permit Number 4246, Special Provision Numbers 1 and 3, and TCEQ Air Permit Number 70403, Special Condition Number 1, by failing to prevent unauthorized emissions released during emissions events; 30 TAC §101.201(a), by failing to submit an initial notification within 24 hours after the discovery of an emission event; 30 TAC §101.201(b), by failing to record and report all of the information required in the final records for the emission events; 30 TAC §116.115(c), TWC, §382.085(b), TCEQ Air Permit Number 4246, Special Provision Numbers 1 and 3, and TCEQ Air Permit Number 70403, Special Condition Number 1, by failing to prevent unauthorized emissions; 30 TAC §101.201(a), by failing to submit an initial notification within 24 hours after the discovery of an emission event; 30 TAC §116.115, Permit Number 70403, Special Condition Number 1, and THSC, §382.085(b), by exceeding the maximum allowable emission rate for hydrogen chloride and hydrogen fluoride; 30 TAC §116.115, Permit Number 70403, Special Condition Number 1, and THSC, §382.085(b), by exceeding the maximum allowable emission rate for particulate matter; PENALTY: \$1.5 million; STAFF ATTORNEY: Paul Sarahan, Litigation Division, MC 175, (512) 239-3423; James Biggins, Litigation Division, MC 175, (713) 767-3500; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

TRD-200501444  
Paul C. Sarahan  
Director, Litigation Division  
Texas Commission on Environmental Quality  
Filed: April 6, 2005



#### Notice of Opportunity to Participate in Permitting Matters

A person may request to be added to a mailing list for public notices processed through the Office of the Chief Clerk for air, water, and waste permitting activities at the TCEQ. You may request to be added to: (1) a permanent mailing list for a specific applicant name and permit number; and/or (2) a permanent mailing list for a specific county or counties.

Note that a request to be added to a mailing list for a specific county will result in notification of all permitting matters affecting that particular county.

To be added to a mailing list, send us your name and address, clearly specifying which mailing list(s) to which you wish to be added. Your written request should be sent to the TCEQ, Office of the Chief Clerk, Mail Code 105, P. O. Box 13087, Austin, TX 78711-3087.

Individual members of the public who wish to inquire about the information contained in this notice, or to inquire about other agency permit applications or permitting processes, should call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040.

TRD-200501448  
LaDonna Castañuela  
Chief Clerk  
Texas Commission on Environmental Quality  
Filed: April 6, 2005



#### Notice of Priority Groundwater Management Area Report Completion

The executive director of the Texas Commission on Environmental Quality (TCEQ or commission) in accordance with 30 Texas Administrative Code (TAC) §294.41(i), gives notice of the completion, recommended action, and availability of the Priority Groundwater Management Area (PGMA) report entitled *Updated Evaluation for the Trans-Pecos Priority Groundwater Management Study Area*. In the report, the executive director concludes the Trans-Pecos study area including all of Loving, Reeves, Ward, and Winkler Counties should not be designated as a PGMA at this time because: 1) most of the identified water supply problems are localized and are not study area-wide problems; 2) water is of sufficient quality in the study area to meet intended and projected uses; and 3) based on criteria adopted by the Region F Water Planning Group, surface and groundwater supplies are sufficient to meet the present needs, and are projected to be sufficient to meet all future needs to 2030 except for some irrigated agriculture and livestock shortfalls. Because the data does not justify PGMA designation at this time, the executive director concludes that the local leadership, landowners, and citizens must determine if they desire to manage their groundwater resources. For their groundwater management consideration, the executive director concludes that either the creation of a multi-county groundwater conservation district (GCD) consisting of all four counties in the study area, or the addition of the four-county study area to the existing Middle Pecos Groundwater Conservation District would be the most feasible, economical, and practical options to achieve groundwater management for the Cenozoic Pecos Alluvium aquifer.

#### EXECUTIVE SUMMARY OF REPORT

In 1990, the Texas Water Commission (predecessor agency of TCEQ) determined the Cenozoic Pecos Alluvium aquifer area did not meet the criteria to be designated as a critical area, but requested the area be reinvestigated at a later date when more data became available. This report summarizes and evaluates data and information that has been developed in the Trans-Pecos study area over the past dozen years to determine if the area is experiencing or is expected to experience, within the next 25-year period, critical groundwater problems. For the purposes of this report, the Trans-Pecos PGMA study area includes Loving, Reeves, Ward, and Winkler Counties.

This update study was originally initiated in December 1998 by the executive director of TCEQ. Specific area evaluation update reports were prepared by the executive administrator of the Texas Water Development Board and the executive director of the Texas Parks and Wildlife Department. Water stakeholder input was solicited by TCEQ questionnaires in May 1999. Twenty study area stakeholders generally responded that there were no major groundwater declines in the Trans-Pecos study area, that groundwater quality problems were mostly found in localized groundwater-level decline areas or areas associated with the naturally occurring salts, and that the water supply corporations and improvement districts exercise some limitations on water usage based on availability. The responding surface water districts noted that they have developed and implemented water conservation plans. Due primarily to major statutory changes to the water planning provisions of state law, the completion of the report was purposely delayed until the regional and state water plans had been developed and adopted and the planning data could be considered. This report relies primarily on the data and supporting information used to develop conclusions and recommendations in the 2001 Region F and 2002 state water plans.

Study area water supplies include the Cenozoic Pecos Alluvium, Dockum, and Edwards-Trinity Plateau aquifers; surface water from the Red Bluff Reservoir, Pecos River, Balmorhea Lake, and stock tanks; and wastewater reuse. In 2000, groundwater sources accounted for over 80% of water usage in the area and provided about 85,813 acre-feet (af) of water for in- and out-of-area uses. Groundwater supplies from the Cenozoic Pecos Alluvium aquifer accounted for 89% of this source type, and the Dockum and Edwards-Trinity Plateau aquifers accounted for about 9% and 2% of this source type, respectively. Red Bluff Reservoir and releases to the Pecos River supplied 14,451 af of water in 2000 for irrigation purposes. Another 308 af of surface water from other local sources, and 1,889 af of direct reuse supplies were also used in 2000. In 2000, irrigation accounted for about 80% of water use followed by municipal and rural domestic uses at 13%; power, less than 5%; and in decreasing order, mining, manufacturing, and livestock at less than 2%, 1%, and 1%, respectively. The regional and state water plans project that between the years 2000 and 2030, total population within the study area will increase by approximately 14% (from 40,936 inhabitants in 2000 to 47,339 inhabitants in 2030). However, the total projected water demand from the four-county study area is not expected to change significantly over the next 30-year period. The total projected demand for 2000 was 146,548 af and the total projected demand for 2030 is 146,032 af, a difference of only 516 af, or less than one percentage point over the 30-year time frame.

Decreased streamflow, natural and man-induced salinity increases, and pollution from oil fields and agriculture have adversely affected the fish population in the study area. The drying up of springs in the study area has been attributed to a lowering of the water table caused by groundwater withdrawal for irrigation purposes. The native cottonwoods, black willow, and grasses that once dominated the riparian corridor along the Pecos River have been taken over by saltcedar, mesquite

brush and woods, and Bermuda grass. The water supply problems identified in this report are localized and are not study area-wide problems. The problems identified include naturally occurring and man-induced poor quality groundwater zones, lack of firm alternative supplies for some irrigation and livestock use, water level declines and water quality degradation in some areas of continued irrigation overdraft and municipal pumpage, potential groundwater impacts from new well field development and demands from outside the area, potential cross-formation water quality impacts from localized areas of subsidence, and mining of groundwater from aquifer storage to meet future demands. Public health risk due to natural and man-induced contamination, inadequate groundwater supply, lack of supply enhancement such as aquifer recharge, and lack of groundwater protection programs were the major water concerns noted by study area respondents.

The available data indicates that water is of sufficient quality in the study area to meet intended and projected uses. Based on criteria adopted by the Region F Water Planning Group, surface and groundwater supplies are sufficient to meet the present needs, and are projected to be sufficient to meet all future needs to 2030 except for some irrigated agriculture and livestock shortfalls. Therefore, the water supply and water quality issues identified in the report are not presently critical problems and are not anticipated to be critical problems during the next 25-year planning horizon. Primarily for these reasons, the report concludes and recommends that this study area should not be designated as a priority groundwater management area at this time.

The report evaluates water management entities within the area and recommends groundwater management strategies to monitor, evaluate, and understand the aquifers and to establish protection programs to minimize drawdown of water levels and maintain existing spring flows to facilitate protection of natural resources. Cooperation and continuation of the Pecos River Ecosystem Project, and facilitation of this and longer term brush maintenance and control programs, are identified as primary groundwater management strategies to help conserve natural resources in the study area. Facilitating administrative programs to help agricultural producers secure conservation grant or loan monies for conversion to more efficient irrigation systems is another groundwater management strategy identified to conserve the natural resources of the study area.

The report evaluates the feasibility and practicability for groundwater management by a GCD and concludes that groundwater management would be beneficial for the study area. The report concludes that a GCD could benefit the study area by implementing aquifer and area-specific strategies for: water quantity and quality research, monitoring, data collection, and assessment; comprehensive water well inventory, registration, and permitting; and weather enhancement and aquifer recharge. Strategies to encourage conservation of fresh groundwater and the use of poorer quality groundwater, to educate school children and the public about the finite water resources and of actions that can be taken to conserve the resources, and to protect fresh water zones by administering an abandoned well location and plugging program would also benefit the citizens of the area. Even though most of the respondents considered significant groundwater problems likely in the next 25-year time frame, only two respondents from the four-county study area favored the creation of GCDs in the area.

Because the available data does not justify PGMA designation for the study area at this time, the report suggests that the local leadership and citizens must determine if they desire to manage groundwater resources. If their answer is yes, these landowners, on their own initiative, will need to consider the different methods available to create a groundwater conservation district. They must also consider several different GCD creation options and the implications for each. The report

concludes that either the creation of a multi-county GCD consisting of all four counties in the study area or the addition of the four-county study area to the existing Middle Pecos Groundwater Conservation District would be the most feasible, economical, and practical options to achieve groundwater management for the Cenozoic Pecos Alluvium aquifer.

The completion of this report concludes TCEQ actions regarding the Trans-Pecos PGMA update study area and the recommendations made in the report are primarily for the water stakeholders in the four-county area. Local decision making and initiative would be required to exercise the groundwater management practices identified and recommended in the report. Anyone who disagrees with the executive director's determination that a PGMA should not be designated may file a motion with the TCEQ to overturn the determination in accordance with 30 TAC §50.39. The deadline to file such a motion will be May 4, 2005.

#### REPORT AVAILABILITY

The executive director's report was filed on April 1, 2005, with TCEQ's Office of the Chief Clerk, located at 12100 Park 35 Circle, Building F, Room 1104, Austin, Texas. The report is available for public inspection at the Office of the Loving County Clerk, located at 100 Bell Street in Mentone; the Office of Reeves County Clerk, located at 100 East 4th Street and the Reeves County Library, located at 505 South Park Street in Pecos; the Office of the Ward County Clerk, located at 400 South Allen and the Ward County Library, located at 409 South Dwight Street in Monahans; the Office of the Winkler County Clerk, located at 100 East Winkler and the Winkler County Library, located at 307 South Poplar Street in Kermit; and the Wink Branch Library, located at 109 Roy Orbison in Wink. The report is also available for inspection at the Middle Pecos Groundwater Conservation District, located at 103 West Callaghan Street in Fort Stockton; the Jeff Davis Underground Water Conservation District, located at 113 State Street in Fort Davis; the Culberson County Groundwater Conservation District, located at 1300 West Broadway in Van Horn; the TCEQ Region 7 Office, located at 3300 North A, Building 4-107 in Midland; and on the commission's Web site at <http://www.tceq.state.tx.us/water/quality/gw/index.html>. Copies of the report may be obtained by contacting Mr. Kelly Mills at (512) 239-4512, by email at [kmills@tceq.state.tx.us](mailto:kmills@tceq.state.tx.us), or in writing to Mr. Kelly Mills, Texas Commission on Environmental Quality, Water Quality Planning and Assessment, MC-147, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200501429

Stephanie Bergeron Perdue  
Director, Environmental Law Division  
Texas Commission on Environmental Quality  
Filed: April 5, 2005



#### Notice of Water Rights Application

Notices mailed March 30, 2005.

PROPOSED TEMPORARY PERMIT NO. TP-5879; Enbridge Pipelines (E. Texas) L.P., 1600 N. Jackson, Jacksonville, Texas 75766, Applicant, has requested authorization to divert and use up to 33.75 acre-feet of water at a maximum diversion rate of 4.456 cfs (2,000 gpm) for a period of fourteen days from Catfish Creek, tributary of Trinity River, Trinity River Basin, for industrial (hydrostatic testing of pipeline) purposes in Anderson County, Texas. The diversion point will be located at 31.8951 N and 95.8742 W, at the Catfish Creek crossing of the Enbridge Right of Way approximately 17 miles northwest of Palestine and 3.3 miles southeast of Bethel in Anderson County. The Commission will review the application as submitted by

the applicant and may or may not grant the application as requested. The application was received on December 23, 2004, and the required fees were received on February 15, 2005. The application was declared to be administratively complete and filed with the Office of the Chief Clerk on February 24, 2005. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, by April 20, 2005.

PROPOSED TEMPORARY PERMIT NO. TP-5880; Enbridge Pipelines (E. Texas) L.P., 1600 N. Jackson, Jacksonville, Texas 75766, Applicant, has requested authorization to divert and use up to 15.34 acre-feet of water at a maximum diversion rate of 4.456 cfs (2,000 gpm) for a period of fourteen days from Irons Bayou, tributary of Sabine River, Sabine River Basin, for industrial (hydrostatic testing of pipeline) purposes in Panola County, Texas. The diversion point will be located at 32.2135 N and 94.4355 W, at the Irons Bayou crossing of the Enbridge Right of Way, approximately 7 miles northwest of Carthage and 2.4 miles southeast of Beckville in Panola County. The Commission will review the application as submitted by the applicant and may or may not grant the application as requested. The application was received on December 23, 2004, and the required fees were received on February 15, 2005. The application was declared to be administratively complete and filed with the Office of the Chief Clerk on February 24, 2005. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, by April 20, 2005.

#### INFORMATION SECTION

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at [www.tceq.state.tx.us](http://www.tceq.state.tx.us).

TRD-200501446  
LaDonna Castañuela  
Chief Clerk  
Texas Commission on Environmental Quality  
Filed: April 6, 2005

#### Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on April 1, 2005, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Lee Bell; SOAH Docket No. 582-04-5440; TCEQ Docket No. 2003-0481-MSW-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Lee Bell on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Paul Munguia, Office of the Chief Clerk, (512) 239-3300.

TRD-200501449  
LaDonna Castañuela  
Chief Clerk  
Texas Commission on Environmental Quality  
Filed: April 6, 2005

#### Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on April 5, 2005, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Naseer Ahmad dba Super Stop 3; SOAH Docket No. 582-05-3394; TCEQ Docket No. 2003-0866-PST-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Naseer Ahmad dba Super Stop 3 on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Paul Munguia, Office of the Chief Clerk, (512) 239-3300.

TRD-200501450  
LaDonna Castañuela  
Chief Clerk  
Texas Commission on Environmental Quality  
Filed: April 6, 2005

#### Proposed Enforcement Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075, which requires that the commission may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **June 6, 2005**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withhold approval of an AO if a comment discloses facts or considerations that



indicate the proposed AO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code, the Texas Health and Safety Code (THSC), and/or the Texas Clean Air Act (the Act). Additional notice is not required if changes to an AO are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on June 6, 2005**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239- 2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the commission in **writing**.

(1) COMPANY: B4Gibson Plumbing Company, LLC dba Gibson Plumbing; DOCKET NUMBER: 2004-2084-PST-E; IDENTIFIER: Petroleum Storage Tank (PST) Facility Identification Number 19796, Regulated Entity Number (RN) 103732483; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: plumbing business with an underground storage tank (UST) system; RULE VIOLATED: 30 TAC §334.49(a) and the Code, §26.3475(d), by failing to provide corrosion protection; 30 TAC §334.50(b)(1)(A) and (2)(A)(i)(III) and the Code, §26.3475(a) and (c)(1), by failing to monitor the USTs for releases and by failing to conduct an annual performance test on the line leak detectors; 30 TAC §334.10(b), by failing to maintain UST system records and have them ready for review; and 30 TAC §334.8(c)(5)(C), by failing to number the tanks with identification numbers; PENALTY: \$9,600; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: John P. Brinkman dba Brinkman Homes; DOCKET NUMBER: 2005-0033-WQ-E; IDENTIFIER: RN1044584841; LOCATION: San Angelo, Tom Green County, Texas; TYPE OF FACILITY: general contractor; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations (CFR) §122.26(a), by failing to obtain authorization to discharge storm water; PENALTY: \$950; ENFORCEMENT COORDINATOR: Brandon Smith, (512) 239-4471; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(3) COMPANY: Kent Jisha dba Dairy Works; DOCKET NUMBER: 2004-1983-AGR-E; IDENTIFIER: Permit Number TXG920100, RN102336161; LOCATION: near Yantis, Hopkins County, Texas; TYPE OF FACILITY: dairy; RULE VIOLATED: 30 TAC §321.31(a) and §321.39(g)(1), by failing to prevent the discharge of waste from an animal feeding operation and to prevent animals from coming into direct contact with surface water; PENALTY: \$520; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5800; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(4) COMPANY: Fair Oaks Club Corporation; DOCKET NUMBER: 2004-2076-EAQ-E; IDENTIFIER: Edwards Aquifer Site Registration Number 13-93011301, RN103771861; LOCATION: Fair Oaks Ranch, Bexar County, Texas; TYPE OF FACILITY: golf course; RULE VIOLATED: 30 TAC §213.4(g)(1)(D) and (2), and (j)(3), by failing to properly deed record an approved modification to an Edwards Aquifer

protection plan (EAPP) and by failing to notify the appropriate regional office in writing and obtain approval for modification of a previously approved EAPP; PENALTY: \$2,000; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(5) COMPANY: Fruitvale Independent School District; DOCKET NUMBER: 2004-1524-MWD-E; IDENTIFIER: Texas Pollutant Discharge Elimination System (TPDES) Permit Number 12369001, RN101527919; LOCATION: Fruitvale, Van Zandt County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 12369001, and the Code, §26.121(a), by failing to comply with the permitted effluent limitations for dissolved oxygen, total suspended solids (TSS), biochemical oxygen demand, and flow; PENALTY: \$3,240; ENFORCEMENT COORDINATOR: Carolyn Lind, (903) 535-5100; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(6) COMPANY: Gobu, Inc. dba Mobil Deluxe Mart; DOCKET NUMBER: 2005-0058-PST-E; IDENTIFIER: PST Facility Identification Number 74792, RN101540631; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: \$1,640; ENFORCEMENT COORDINATOR: Shontay Wilcher, (512) 239-2136; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: H&H Water Supply Corporation; DOCKET NUMBER: 2005-0092-PWS-E; IDENTIFIER: Public Water Supply (PWS) Number 1550029, RN101438612; LOCATION: Riesel, McLennan County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.42(e)(4)(B), by failing to properly protect chlorine cylinders; and 30 TAC §290.41(c)(1)(A) and (F), by failing to ensure that a groundwater source is located at the prescribed distance and by failing to provide a sanitary easement; PENALTY: \$263; ENFORCEMENT COORDINATOR: Edward Moderow, (512) 239-2680; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(8) COMPANY: H-M-W Special Utility District of Harris and Montgomery Counties; DOCKET NUMBER: 2004-1360-MWD-E; IDENTIFIER: TPDES Permit Number 0014266001, RN101919470; LOCATION: Magnolia, Montgomery County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 001426601, and the Code, §26.121(a), by failing to comply with the permitted daily average for TSS and chlorine; PENALTY: \$3,210; ENFORCEMENT COORDINATOR: Laurie Eaves, (512) 239-4495; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(9) COMPANY: Hamshire Community Water Supply Corporation; DOCKET NUMBER: 2004-2069-PWS-E; IDENTIFIER: PWS Number 1230025, RN101283208; LOCATION: Hamshire, Jefferson County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.110(b)(4), by failing to maintain residual disinfection concentrations in the water within the distribution system; PENALTY: \$107; ENFORCEMENT COORDINATOR: Catherine Albrecht, (713) 767-3500; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(10) COMPANY: Hank's Roll-Off & Waste Services, Inc.; DOCKET NUMBER: 2005-0100-MSW-E; IDENTIFIER: RN102467347; LOCATION: Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: waste collection, recycling, and disposal; RULE VIOLATED: 30 TAC §330.4(a) and (b), by failing to obtain a permit or authorization to



process municipal solid waste (MSW) and by transporting MSW for disposal to an unauthorized facility; PENALTY: \$900; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: Amirali Ladhani dba Henry's Quick Stop; DOCKET NUMBER: 2004-1577-PST-E; IDENTIFIER: PST Registration Number 36490, RN101737575; LOCATION: Poteet, Atascosa County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: \$1,900; ENFORCEMENT COORDINATOR: Leila Pezeshki, (210) 490-3096; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(12) COMPANY: Bahadur Alibhai dba Hub Food Store; DOCKET NUMBER: 2004-2033-PST-E; IDENTIFIER: PST Facility Identification Number 6246, RN101547677; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: \$1,090; ENFORCEMENT COORDINATOR: Jill McNew, (512) 239-0560; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: Lolly Malhotra dba J A M Food Store; DOCKET NUMBER: 2005-0215-PST-E; IDENTIFIER: PST Facility Identification Number 6226, RN101545069; LOCATION: Mineral Wells, Palo Pinto County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; and 30 TAC §334.22(a) and the Code, §5.702, by failing to pay UST fees; PENALTY: \$2,160; ENFORCEMENT COORDINATOR: Suzanne Baldwin, (512) 239-1675; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(14) COMPANY: Lake Ridge Properties, Inc. dba Lake Ridge Estates; DOCKET NUMBER: 2004-1928-PWS-E; IDENTIFIER: PWS Number 2330029, RN101266948; LOCATION: near Del Rio, Val Verde County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.41(c)(1)(F), by failing to provide sanitary easements; 30 TAC §290.46(d)(2)(A), (e)(4)(A), (f)(2) and (3)(D)(ii), (j), and (m), by failing to maintain a residual disinfectant concentration of at least 0.2 milligrams per liter free chlorine, by failing to have a certified Class D or higher licensed operator, by failing to maintain the system's operating records, by failing to produce documentation of the annual tank inspections, by failing to provide documentation of customer service agreements or inspection reports, and by failing to maintain and conduct maintenance and housekeeping practices; 30 TAC §290.110(e)(4), by failing to submit a quarterly distribution report; 30 TAC §290.45(b)(1)(C)(ii) and (iii) and THSC, §341.0315(c), by failing to provide a storage capacity of 200 gallons per connection and by failing to provide two or more pumps having a total capacity of two gallons per minute per connection; and 30 TAC §21.3 and §290.51 and the Code, §5.702, by failing to pay the water quality and public health service fees; PENALTY: \$4,673; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 1403 Seymour, Suite 2, Laredo, Texas 78040-8752, (956) 791-6611.

(15) COMPANY: Lamb County Electric Cooperative, Inc.; DOCKET NUMBER: 2004-1795-PST-E; IDENTIFIER: PST Facility Identification 18582, RN100695329; LOCATION: Littlefield, Lamb County, Texas; TYPE OF FACILITY: power distribution service vehicle refueling station; RULE VIOLATED: 30 TAC §334.50(b)(2) and

(d)(1)(B)(ii) and the Code, §26.3475(a) and (c)(1), by failing to monitor the piping of the UST system and by failing to reconcile inventory control records; 30 TAC §334.8(c)(4)(A)(vii), (5)(A)(i) and (iii), and (B)(ii), and the Code, §26.3467(a), by failing to renew a previously issued UST delivery certificate, by failing to make available to any common carrier a valid delivery certificate, and by failing to ensure that a valid, current delivery certificate is posted at the facility; and 30 TAC §334.45(c)(3)(A), by failing to securely anchor the emergency shut-off valve; PENALTY: \$13,200; ENFORCEMENT COORDINATOR: Chad Blevins, (512) 239-6017; REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-7092.

(16) COMPANY: Lamb County Hospital dba Lamb Healthcare Center; DOCKET NUMBER: 2005-0214-PST-E; IDENTIFIER: PST Facility Identification 56992, RN101839488; LOCATION: Littlefield, Lamb County, Texas; TYPE OF FACILITY: county hospital; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance; PENALTY: \$840; ENFORCEMENT COORDINATOR: Suzanne Baldwin, (512) 239-1675; REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-7092.

(17) COMPANY: La Porte Methanol Company, LP and Linde Gas, LLC; DOCKET NUMBER: 2004-0973-AIR-E; IDENTIFIER: Air Account Number HX2302N, RN102830866; LOCATION: La Porte, Harris County, Texas; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §115.354(1)(B), 40 CFR §63.168(i)(3), and THSC, §382.085(b), by failing to conduct annual monitoring of difficult-to-monitor valves; 30 TAC §115.352(4), 40 CFR §63.167(a)(1), and THSC, §382.085(b), by failing to equip two open-ended lines with either a cap, blind flange, plug, or a second valve; and 30 TAC §115.355(1) and THSC, §382.085(b), by failing to properly conduct test method 21 monitoring; PENALTY: \$12,480; ENFORCEMENT COORDINATOR: Larry King, (512) 339-2929; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(18) COMPANY: Lone Star Properties LP dba Trinity Builders; DOCKET NUMBER: 2004-2078-WQ-E; IDENTIFIER: TPDES General Permit Number TXR15N061, RN104403001; LOCATION: Abilene, Taylor County, Texas; TYPE OF FACILITY: general contracting company; RULE VIOLATED: 30 TAC §281.25(a)(4) and TPDES General Permit Number TXR15N061, by failing to develop and implement a storm water pollution plan; PENALTY: \$1,050; ENFORCEMENT COORDINATOR: Laurie Eaves, (512) 239-4495; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(19) COMPANY: Newell Recycling Company of El Paso, L.P.; DOCKET NUMBER: 2005-0242-PST-E; IDENTIFIER: PST Facility Identification Number 23720, RN100581768; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: recycling; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance; PENALTY: \$672; ENFORCEMENT COORDINATOR: Jill McNew, (512) 239-0560; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(20) COMPANY: PNI Distribution Incorporated; DOCKET NUMBER: 2004-1861-PST-E; IDENTIFIER: RN103081055; LOCATION: Garland, Dallas County, Texas; TYPE OF FACILITY: fuel distributor; RULE VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to ensure that the owner or operator had a valid, current delivery certificate; PENALTY: \$7,000; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(21) COMPANY: Penske Truck Leasing Co., L.P.; DOCKET NUMBER: 2004-1905-AIR-E; IDENTIFIER: Air Account Number EE13120, RN100562180; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: truck leasing company that dispenses gasoline; RULE VIOLATED: 30 TAC §114.100(a) and THSC, §382.085(b), by failing to meet the minimum oxygen content of 2.7% by weight; PENALTY: \$1,200; ENFORCEMENT COORDINATOR: Susan Longenecker, (512) 239-0968; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(22) COMPANY: Producers Livestock Auction Company; DOCKET NUMBER: 2004-2085-AGR-E; IDENTIFIER: RN101964781; LOCATION: San Angelo, Tom Green County, Texas; TYPE OF FACILITY: animal feeding operation; RULE VIOLATED: 30 TAC §321.47(d)(2) and the Code, §26.121(a), by failing to adequately maintain proper corral pen drainage; PENALTY: \$2,040; ENFORCEMENT COORDINATOR: Laurie Eaves, (512) 239-4495; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(23) COMPANY: Shank C&E Investments, L.L.C.; DOCKET NUMBER: 2005-0024-PST-E; IDENTIFIER: RN100535582; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: fuel distributor; RULE VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to observe a valid, current delivery certificate; PENALTY: \$408; ENFORCEMENT COORDINATOR: Ronnie Kramer, (806) 353-9251; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(24) COMPANY: Tash, Inc. dba In-N-Out Mini Mart; DOCKET NUMBER: 2005-0243-PST-E; IDENTIFIER: PST Facility Identification Number 60716, RN101633048; LOCATION: Arlington, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance; PENALTY: \$1,680; ENFORCEMENT COORDINATOR: Deana Holland, (512) 239-2504; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(25) COMPANY: The Lubrizol Corporation; DOCKET NUMBER: 2004-1527-AIR-E; IDENTIFIER: Air Account Number HG0459J, RN100221589; LOCATION: Deer Park, Harris County, Texas; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: 30 TAC §116.115(b)(1), Title V Permit Number O-02191, and THSC, §382.085(b), by failing to operate as represented in its permits by operating the plate and frame filter without a hood and blower; PENALTY: \$5,325; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(26) COMPANY: Total Petrochemicals USA, Inc.; DOCKET NUMBER: 2004-2037-IWD-E; IDENTIFIER: TPDES Permit Number 1000000, RN100212109; LOCATION: La Porte, Harris County, Texas; TYPE OF FACILITY: polypropylene manufacturing complex; RULE VIOLATED: 30 TAC §305.125(1), (4), and (5), TPDES Permit Number 1000000, and the Code, §26.121(a), by failing to prevent unauthorized discharges and by failing to comply with permitted effluent limits; PENALTY: \$22,000; ENFORCEMENT COORDINATOR: Erika Fair, (512) 239-6673; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(27) COMPANY: Gary C. Becker dba University Exxon; DOCKET NUMBER: 2004-1840-PST-E; IDENTIFIER: PST Facility Identification Number 26013, RN100536960; LOCATION: San Marcos, Hays County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by

failing to provide acceptable financial assurance; PENALTY: \$950; ENFORCEMENT COORDINATOR: Jill McNew, (512) 239-0560; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(28) COMPANY: Carl Williams dba Carl Williams Sand & Gravel; DOCKET NUMBER: 2005-0127-MSW-E; IDENTIFIER: RN104458450; LOCATION: near Weatherford, Tarrant County, Texas; TYPE OF FACILITY: unpermitted MSW landfill consisting of a sand and gravel mining pit; RULE VIOLATED: 30 TAC §330.4(a) and (b) and §330.5(c), by failing to prevent the disposal/dumping and storage of MSW at an unauthorized, non-permitted disposal site; PENALTY: \$800; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(29) COMPANY: Kenneth Young; DOCKET NUMBER: 2004-2081-MSW-E; IDENTIFIER: RN104000039; LOCATION: near Brady, McCulloch County, Texas; TYPE OF FACILITY: unauthorized landfill; RULE VIOLATED: 30 TAC §330.5(c), by failing to prevent the disposal of MSW at an unauthorized disposal site; PENALTY: \$1,520; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

TRD-200501423

Paul C. Sarahan

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: April 5, 2005

## Texas Ethics Commission

### List of Late Filers

Listed below are the names of filers from the Texas Ethics Commission who did not file reports, or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Robbie Miller at (512) 463-5800 or (800) 325-8506.

#### Deadline: Semiannual GPAC Report Due July 15, 2004

Thomas Hamilton Price, Alief Democrats, 12818 Westpark Dr., Houston, Texas 77082-3620

#### Deadline: Semiannual JC/OH Report Due July 15, 2004

David Flores, 3128 Old Beeville Saint Mary's Rd., Beeville, Texas 78102-8828

Glenn O. Lewis, 6328 Banbury Dr., Fort Worth, Texas 76119

#### Deadline: 8 Days Before An Election Report Due October 25, 2004

Donald J. Large, 11731 Fall Meadow Lane, Houston, Texas 77039-5803

Charles H. Schweiger, Dallas County Republican Party (CEC), 10100 N. Central Expy., Suite 175, Dallas, Texas 75231

#### Deadline: Semiannual GPAC Report Due January 18, 2005

Mike Martin, Galveston Bay Political Education Fund, 3401 Allen Pkwy #100, Houston, Texas 77019

Guy R. Jackson, Chambers County Democratic Executive Committee (CEC), P.O. Box D, Anahuac, Texas 77514

Wesley R. Carrera, Texas Water Quality Association PAC, 1119 Paulsun, San Antonio, Texas 78219

Charles M. Miles, Black Voter Action Project, 7204 Marywood Cr., Austin, Texas 78723

David C. Atherton, Dental Laboratory PAC of Texas, 128 Wooded Crest Dr., Woodway, Texas 76712

Byron LeFlore, Committee for Judicial Reform, 755 E. Mulberry St., Suite 200, San Antonio, Texas 78212

Brian J. Welkes, Republican Liberty PAC, 7715 Robin Rd., Dallas, Texas 75209

Angela M. Roper, Texas Towing and Storage Assn. PAC, P.O. Box 1643, Georgetown, Texas 78627

Richard H. Callison, Greater Texas Sportsmen's Coalition, 3405 Edloe St., Suite 380, Houston, Texas 77027

Kevin McDonnell, Republican Party of Ellis County, Local, 203 S. College St., Suite 200, Waxahachie, Texas 75165

Vince Leibowitz, Van Zandt County Democratic Party (CEC), P.O. Box 217, Canton, Texas 75103

Clarence B. Bagby, Houston Historic Preservation PAC, 2003 Kane St., Houston, Texas 77007

Stanley J. Briers, Plumbing A/C Mechanical Contractors PAC, 219 Whispering Oaks, Taylor Lake Village, Texas 77856

Trista Rae Allen, Texas Democratic Women PAC, 701 Rio Grande, Austin, Texas 78701

Hector Carreno, Latina PAC, 714 Parker St., Houston, Texas 77007

Ross C. Ahlstrom, Jr., Brazoria County Republican Men's Club, 149 Oak Dr., Lake Jackson, Texas 77566

Wendy O. Melton, Texas Democratic Women of Montgomery Co., 10721 Timberwagon, The Woodlands, Texas 77380

Derrick M. Mitchell, ANSUN PAC, 3310 Louisiana St. #2315, Houston, Texas 77006-6638

B. Fred Ashmead, Fair Judge Committee, 1348 Gardenia, Houston, Texas 77018

Kathie N. Ware, Concerned Citizens for Regional Water PAC, 12210 De Forrest, Houston, Texas 77066

Rudolf Stahel, Collin County Republican Party (CEC), 2520 Ave. K, Suite 280, Plano, Texas 75074

Javier A. Soza, McAllen Fire Fighter's Assn. Local 2602, 2044 Umar Ave., McAllen, Texas 78504

Eleazar Ramos, Voters for Better Government, 306 Puig Dr., Laredo, Texas 78041

Richard A. Gibbs, Municipal Utilities District PAC, 2600 Great Oaks Dr., Round Rock, Texas 78681

Dorothy Walker, Kessler Park Republican Women, 2711 Poinsettia Dr., Dallas, Texas 75211

Thomas C. Devor, Texas Politics Online PAC, 5610 Oak Trail Lane, Houston, Texas 77091

Paul J. Gebolys, Woodlands Voter Information Project, 594 Sawdust Road, Suite 214, The Woodlands, Texas 77380

Thomas H. Price, Alief Democrats, 12818 Westpark Dr., Houston, Texas 77082

W. Troy McKinney, Concerned Citizens for a Responsible Judiciary PAC, 440 Louisiana, Suite 2110, Houston, Texas 77002

Leslie J. Baldwin, Ya Basta PAC, 9455 Viscount #116, El Paso, Texas 79925

Olu McGuinnis Otubusin, African Coalition PAC, 6430 Richmond Ave., Suite 420, Houston, Texas 77057

Brenda A. Kindt, Dallas BOMA PAC, 16633 N. Dallas Pkwy., Suite 200, Addison, Texas 75001

**Deadline: Semiannual J/COH Report Due January 18, 2005**

Daniel L. Alford, IV, P.O. Box 275, Caldwell, Texas 77836

Boyd W. Bauer, P.O. Box 1436, Beeville, Texas 78104

James R. Bridges, 5447 Willis, Dallas, Texas 75206

Gabriella S. Canales, 1600 E. Main, Suite 200, Alice, Texas 78332

Douglas R. Cannon, 1025 S. Shepherd, Suite 404, Houston, Texas 77019-3634

Gerry N. Crawford, Rt. 16 Box 2161, Lufkin, Texas 75901

Chloe "Jack" Daniel, P.O. Box 810570, Dallas, Texas 75381-0570

Michael Esparza, P.O. Box 156, Alice, Texas 78333

Michelle A. Fling, P.O. Box 353, Bastrop, Texas 78602-0353

David Flores, 3128 Old Beeville Saint Mary's Rd., Beeville, Texas 78102-8828

Michael A. Flores, 3800 Lynwood St., El Paso, Texas 79936

Eric J. Freeman, 13207 Darwin Lane, Austin, Texas 78729

Xavier O. Garcia, 5919 Bayberry Way, Sugar Land, Texas 77479

Timoteo Garza, 2392 Willow Trail, Eagle Pass, Texas 78852

Paul Herrmann, 320 S. Polk #902, Amarillo, Texas 79101

A. Robert Hinojosa, 7211 Regency Square Blvd., Suite 111, Houston, Texas 77036

Jess A. Holloway, 1326 Albany St., Apt. 2, Abilene, Texas 79605-5069

Rogelio Ibanez, Jr., 1410 Dove, McAllen, Texas 78504

Elizabeth C. Jandt, 112 N. Austin St., Seguin, Texas 78155

Stephen Kyle Johnston, 678 Fawn Dr., Houston, Texas 77015

Charlie Urbina Jones, 115 N. Cibolo St., San Antonio, Texas 78207

Ann E. Kitchen, 2401 Briargrove, Austin, Texas 78704

V. Sue Koenig, 1803 Silverado Dr., Weatherford, Texas 76087

Donald J. Large, 11731 Fall Meadow Lane, Houston, Texas 77039-5803

Glenn O. Lewis, 6328 Banbury Dr., Fort Worth, Texas 76119

Ron S. Lozano, 360 E. Hwy. 77, Suite 1, San Benito, Texas 78589-5214

Napoleon Madrid, 7811 Wildeagle, San Antonio, Texas 78255

Mark Nancarrow, P.O. Box 38311, Dallas, Texas 75238

Julie Iris Oldham, 4523 Allegheny Dr., San Antonio, Texas 78229

Robert Penrice, 2000 25th Ave. N., Texas City, Texas 77590

Carmen R. Rojo, 110 E. Nueva, San Antonio, Texas 78204

Christopher M. Shindler, 6010 Hart Fld., San Antonio, Texas 78249

Clifford F. William, 14210 Henry Road, Houston, Texas 77060-5615

John Worldpeace, 1229 Heights Blvd., Houston, Texas 77008-6917

Virgil W. Yanta, 140 Hwy. 46 W., Boerne, Texas 78006-8114

Alma Zepeda, 121 E. 12th #9, Houston, Texas 77008

**Deadline: Monthly MPAC Report Due January 5, 2005**

Shari L. Degan, Dallas Police Officer's PAC, 1412 Griffin St. East, Dallas, Texas 75215

TRD-200501426

David Reisman

Executive Director

Texas Ethics Commission

Filed: April 5, 2005

**Texas Health and Human Services Commission**

**Public Notice**

The Health and Human Services Commission, State Medicaid Office, received approval from the Centers for Medicare and Medicaid Services to amend the Title XIX Medical Assistance Program state plan by Transmittal Number 04-27, Amendment Number 691.

This amendment removes reference to service coordination for individuals enrolled in Mental Retardation Local Authorities (MRLA). The MRLA waiver program was discontinued and the individuals enrolled in the MRLA program have been enrolled in the Home and Community-based Services (HCS) program. The amendment will not impact the rate of those local authorities providing case management for individuals with mental retardation, a related condition, or pervasive developmental disorder. The reimbursement methodology will remain the same. The effective date of the amendment is December 1, 2004.

For additional information, please contact Gilbert Estrada, Policy Development Support with the Medicaid/CHIP Division, at (512) 491-1331 or by email at gilbert.estrada@hhsc.state.tx.us.

TRD-200501387

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Filed: April 4, 2005

**Public Notice**

The Health and Human Services Commission's State Medicaid Office received approval from the Centers for Medicare and Medicaid Services to amend the Title XIX Medical Assistance Program state plan by Transmittal Number TX04-031, Amendment Number 695.

HHSC proposed an amendment to the Texas Medicaid State Plan concerning Pharmacy Dispensing Fees. The amendment adds an incentive reimbursement for dispensing generic products for which a manufacturer has offered a supplemental rebate to the state. Under Texas Government Code §531.070(h), HHSC is required to include generic drug products in the Preferred Drug List, created by Texas Government Code §531.0702. The effective date of the amendment is December 1, 2004.

For additional information, please contact Gilbert Estrada, Policy Development Support with the Medicaid/CHIP Division, at (512) 491-1331 or by email at gilbert.estrada@hhsc.state.tx.us.

TRD-200501388

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Filed: April 4, 2005

**Texas Department of Insurance**

**Company Licensing**

Application to change the name of FIREMAN'S FUND INSURANCE COMPANY OF TEXAS to PROCENTURY INSURANCE COMPANY, a domestic Fire and/or Casualty company. The home office is in Dallas, Texas.

Application to change the name of ORION LIFE INSURANCE COMPANY to MAGELLAN LIFE INSURANCE COMPANY, a foreign Life, Accident, and/or Health company. The home office is in Wilmington, Delaware.

Application for admission to the State of Texas by AUTOONE INSURANCE COMPANY, a foreign Fire and/or Casualty company. The home office is in Melville, New York.

Application for admission to the State of Texas by EMPLOYERS COMPENSATION INSURANCE COMPANY, a foreign Fire and/or Casualty company. The home office is in Glendale, California.

Any objections must be filed with the Texas Department of Insurance, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701, within 20 days after this notice is published in the *Texas Register*.

TRD-200501442

Gene C. Jarmon

Chief Clerk and General Counsel

Texas Department of Insurance

Filed: April 6, 2005

**Texas Lottery Commission**

**Instant Game Number 551 "Barrel of Bucks"**

**1.0 Name and Style of Game.**

A. The name of Instant Game No. 551 is "BARREL OF BUCKS". The play style is "key number match with auto win".

**1.1 Price of Instant Ticket.**

A. Tickets for Instant Game No. 551 shall be \$2.00 per ticket.

**1.2 Definitions in Instant Game No. 551.**

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, BUCK SYMBOL, \$1.00, \$2.00, \$3.00, \$5.00, \$10.00, \$15.00, \$20.00, \$30.00, \$60.00, \$200, \$1,000 and \$30,000.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink

in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

**Figure 1: GAME NO. 551 - 1.2D**

<b>PLAY SYMBOL</b>	<b>CAPTION</b>
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
<b>BUCK SYMBOL</b>	<b>AUTO</b>
\$1.00	ONE\$
\$2.00	TWO\$
\$3.00	THREE\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$15.00	FIFTN
\$20.00	TWENTY
\$30.00	THIRTY
\$60.00	SIXTY
\$200	TWO HUND
\$1,000	ONE THOU
\$30,000	30 THOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

**Figure 2: GAME NO. 551 - 1.2E**

<b>CODE</b>	<b>PRIZE</b>
<b>TWO</b>	<b>\$2.00</b>
<b>THR</b>	<b>\$3.00</b>
<b>FIV</b>	<b>\$5.00</b>
<b>TEN</b>	<b>\$10.00</b>
<b>FTN</b>	<b>\$15.00</b>
<b>TWN</b>	<b>\$20.00</b>

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of \$2.00, \$3.00, \$5.00, \$10.00, \$15.00 or \$20.00.

H. Mid-Tier Prize - A prize of \$30.00, \$60.00 or \$200.

I. High-Tier Prize - A prize of \$1,000 or \$30,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (551), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 250 within each pack. The format will be: 551-0000001-001.

L. Pack - A pack of "BARREL OF BUCKS" Instant Game tickets contains 250 tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). Tickets 001 and 002 will be on the top page; tickets 003 and 004 on the next page; etc.; and tickets 249 and 250 will be on the last page. Please note the books will be in a A - B configuration.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "BARREL OF BUCKS" Instant Game No. 551 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "BARREL OF BUCKS" Instant Game is determined once the latex on the ticket is scratched off to expose 22

(twenty-two) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to either BARREL NUMBER play symbols the player wins prize shown for that number. If a player reveals a BUCK play symbol the player wins prize shown for that number instantly. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

#### 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 22 (twenty-two) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 22 (twenty-two) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 22 (twenty-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 22 (twenty-two) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

#### 2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No duplicate non-winning Your Numbers play symbols on a ticket.

C. No duplicate Barrel Numbers play symbols on a ticket.

D. No 3 or more like non-winning prize symbols on a ticket.

E. No prize amount in a non-winning spot will correspond with the Your Number play symbol (i.e. 5 and \$5).

#### 2.3 Procedure for Claiming Prizes.

A. To claim a "BARREL OF BUCKS" Instant Game prize of \$2.00, \$3.00, \$5.00, \$10.00, \$15.00, \$20.00, \$30.00, \$60.00 or \$200, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$30.00, \$60.00 or \$200 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "BARREL OF BUCKS" Instant Game prize of \$1,000 or \$30,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated

winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "BARREL OF BUCKS" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "BARREL OF BUCKS" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "BARREL OF BUCKS" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel

as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

### 3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose

signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 10,080,000 tickets in the Instant Game No. 551. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 551 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$2	1,209,600	8.33
\$3	766,080	13.16
\$5	141,120	71.43
\$10	120,960	83.33
\$15	100,800	100.00
\$20	40,320	250.00
\$30	40,320	250.00
\$60	23,856	422.54
\$200	4,032	2,500.00
\$1,000	250	40,320.00
\$30,000	15	672,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 4.12. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 551 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 551, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200501435

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Filed: April 5, 2005

### Instant Game Number 553 "Fast Cash"

#### 1.0 Name and Style of Game.

A. The name of Instant Game No. 553 is "FAST CASH". The play style is "key number match with auto win".

#### 1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 553 shall be \$1.00 per ticket.

#### 1.2 Definitions in Instant Game No. 553.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play



Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, MONEY BAG SYMBOL, \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100 or \$500.

D. Play Symbol Caption- the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

**Figure 1: GAME NO. 553 - 1.2D**

<b>PLAY SYMBOL</b>	<b>CAPTION</b>
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
<b>MONEY BAG SYMBOL</b>	<b>AUTO</b>
\$1.00	ONE\$
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUND
\$500	FIV HUND

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 553 - 1.2E

CODE	PRIZE
ONE	\$1.00
TWO	\$2.00
FOR	\$4.00
FIV	\$5.00
TEN	\$10.00
TWN	\$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00 or \$20.00.

H. Mid-Tier Prize - A prize of \$50.00, \$100 or \$500.

I. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (553), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 250 within each pack. The format will be: 553-0000001-001.

K. Pack - A pack of "FAST CASH" Instant Game tickets contains 250 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; tickets 006 and 010 on the next page; etc.; and tickets 246 and 250 will be on the last page. A ticket will be folded over on both the front and back of the book so both ticket art and ticket backs are displayed in the shrinkwrap.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "FAST CASH" Instant Game No. 553 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "FAST CASH" Instant Game is determined once the latex on the ticket is scratched off to expose 12 (twelve) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to either

WINNING NUMBER play symbol the player wins the prize shown for that number. If a player reveals a moneybag symbol the player wins prize shown instantly. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

#### 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

- Exactly 12 (twelve) Play Symbols must appear under the latex overprint on the front portion of the ticket;
- Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
- Each of the Play Symbols must be present in its entirety and be fully legible;
- Each of the Play Symbols must be printed in black ink except for dual image games;
- The ticket shall be intact;
- The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
- The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
- The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
- The ticket must not be counterfeit in whole or in part;
- The ticket must have been issued by the Texas Lottery in an authorized manner;
- The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
- The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
- The ticket must be complete and not miscut, and have exactly 12 (twelve) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
- The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
- The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 12 (twelve) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 12 (twelve) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

#### 2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No duplicate non-winning Your Numbers play symbols on a ticket.

C. No duplicate Winning Numbers play symbols on a ticket.

D. No duplicate non-winning prize symbols on a ticket.

E. No prize amount in a non-winning spot will correspond with the Your Number play symbol (i.e. 5 and \$5).

F. The auto win symbol will never appear more than once on a ticket.

#### 2.3 Procedure for Claiming Prizes.

A. To claim a "FAST CASH" Instant Game prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$50.00, \$100 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. As an alternative method of claiming a "FAST CASH" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office

Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

D. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "FAST CASH" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.7 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

#### 3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall

be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

Figure 3: GAME NO. 553 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$1	1,753,920	8.62
\$2	665,280	22.73
\$4	423,360	35.71
\$5	120,960	125.00
\$10	90,720	166.67
\$20	60,480	250.00
\$50	17,640	857.14
\$100	1,827	8,275.86
\$500	1,008	30,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 4.82. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 553 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 553, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200501436  
Kimberly L. Kiplin  
General Counsel  
Texas Lottery Commission  
Filed: April 5, 2005



Instant Game Number 556 "Cash Win-Fall"

1.0 Name and Style of Game.

A. The name of Instant Game No. 556 is "CASH WIN-FALL". The play style is "key number match with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 556 shall be \$5.00 per ticket.

1.2 Definitions in Instant Game No. 556.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, COIN SYMBOL, \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100, \$500, \$1,000, \$5,000 or \$60,000

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 556 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
COIN SYMBOL	AUTO
\$1.00	ONE\$
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$

\$15.00	FIFTN
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUND
\$500	FIV HUND
\$1,000	ONE THOU
\$5,000	FIV THOU
\$60,000	60 THOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify

and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 556 - 1.2E

CODE	PRIZE
FIV	\$5.00
TEN	\$10.00
FTN	\$15.00
TWN	\$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of \$5.00, \$10.00, \$15.00 or \$20.00.

H. Mid-Tier Prize - A prize of \$50.00, \$100 or \$500.

I. High-Tier Prize - A prize of \$1,000, \$5,000 or \$60,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (556), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 75 within each pack. The format will be: 556-0000001-001.

L. Pack - A pack of "CASH WIN-FALL" Instant Game tickets contains 75 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements

of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "CASH WIN-FALL" Instant Game No. 556 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "CASH WIN-FALL" Instant Game is determined once the latex on the ticket is scratched off to expose 45 (forty-five) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to any of the WINNING NUMBERS play symbols the player wins the PRIZE shown for that number. If a player reveals a coin symbol the player wins the prize shown instantly. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

#### 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 45 (forty-five) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 45 (forty-five) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 45 (twenty) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.
17. Each of the 45 (forty-five) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

## 2.2 Programmed Game Parameters.

- A. Consecutive non-winning tickets will not have identical play data, spot for spot.
- B. No duplicate Winning Numbers on a ticket.
- C. No more than four like non-winning prize symbols on a ticket.

D. No prize amount in a non-winning spot will correspond with the Your Number play symbol (i.e. 5 and \$5).

## 2.3 Procedure for Claiming Prizes.

A. To claim a "CASH WIN-FALL" Instant Game prize of \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$50.00, \$100 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "CASH WIN-FALL" Instant Game prize of \$1,000, \$5,000 or \$60,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "CASH WIN-FALL" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General; or
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "CASH WIN-FALL" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "CASH WIN-FALL" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

### 3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 5,040,000 tickets in the Instant Game No. 556. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 556 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$5	806,400	6.25
\$10	369,600	13.64
\$15	134,400	37.50
\$20	100,800	50.00
\$50	67,200	75.00
\$100	7,896	638.30
\$500	588	8,571.43
\$1,000	378	13,333.33
\$5,000	50	100,800.00
\$60,000	5	1,008,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 3.39. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 556 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 556, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

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Kimberly L. Kiplin  
General Counsel  
Texas Lottery Commission  
Filed: April 6, 2005



Instant Game Number 559 "Sapphire Blue 7's"

1.0 Name and Style of Game.

A. The name of Instant Game No. 559 is "SAPPHIRE BLUE 7'S". The play style is "key symbol match with doubler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 559 shall be \$2.00 per ticket.

1.2 Definitions in Instant Game No. 559.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, SAPPHIRE GEM SYMBOL, 8, 9, 10, 11, 12, 13, 14, 15, , \$1.00, \$2.00, \$4.00, \$10.00, \$20.00, \$50.00, \$200, \$1,000 or \$21,000.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 559 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
SAPPHIRE GEM SYMBOL	DBL
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
7 SYMBOL	WIN
\$1.00	ONE\$
\$2.00	TWO\$
\$4.00	FOUR\$
\$10.00	TEN\$
\$20.00	TWENTY
\$50.00	FIFTY
\$200	TWO HUND
\$1,000	ONE THOU
\$21,000	21 THOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 559 - 1.2E

CODE	PRIZE
TWO	\$2.00
FOR	\$4.00
FIV	\$5.00
EGT	\$8.00
TEN	\$10.00
TWL	\$12.00
TWN	\$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of \$2.00, \$4.00, \$5.00, \$8.00, \$10.00, \$12.00 or \$20.00.

H. Mid-Tier Prize - A prize of \$50.00 or \$200.

I. High-Tier Prize - A prize of \$1,000 or \$21,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (559), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 250 within each pack. The format will be: 559-0000001-001.

L. Pack - A pack of "SAPPHIRE BLUE 7'S" Instant Game tickets contains 250 tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). Tickets 001 and 002 will be on the top page; tickets 003 and 004 on the next page; etc.; and tickets 249 and 250 will be on the last page. Please note the books will be in a A - B configuration.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "SAPPHIRE BLUE 7'S" Instant Game No. 559 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket.

A prize winner in the "SAPPHIRE BLUE 7'S" Instant Game is determined once the latex on the ticket is scratched off to expose 16 (sixteen) Play Symbols. If a player reveals a "7" play symbol the player wins PRIZE shown for that symbol. If a player reveals a sapphire gem play symbol the player wins DOUBLE the PRIZE shown for that symbol. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

#### 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

- Exactly 16 (sixteen) Play Symbols must appear under the latex overprint on the front portion of the ticket;
- Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
- Each of the Play Symbols must be present in its entirety and be fully legible;
- Each of the Play Symbols must be printed in black ink except for dual image games;
- The ticket shall be intact;
- The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
- The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
- The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
- The ticket must not be counterfeit in whole or in part;
- The ticket must have been issued by the Texas Lottery in an authorized manner;
- The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
- The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
- The ticket must be complete and not miscut, and have exactly 16 (sixteen) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
- The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 16 (sixteen) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 16 (sixteen) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

## 2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No more than one pair of non-winning prize symbols on a ticket.

C. No duplicate non-winning play symbols.

D. Every ticket will have a minimum of three and maximum of seven blue play symbols to prevent pick out.

E. The 7 (auto win) play symbol and gem (doubler) play symbol will only appear as dictated by the prize structure.

F. The gem (doubler) play symbol may only appear once on a ticket.

## 2.3 Procedure for Claiming Prizes.

A. To claim a "SAPPHIRE BLUE 7'S" Instant Game prize of \$2.00, \$4.00, \$5.00, \$8.00, \$10.00, \$12.00, \$20.00, \$50.00 or \$200, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$50.00 or \$200 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "SAPPHIRE BLUE 7'S" Instant Game prize of \$1,000 or \$21,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "SAPPHIRE BLUE 7'S" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "SAPPHIRE BLUE 7'S" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "SAPPHIRE BLUE 7'S" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed

on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 11,040,000 tickets in the Instant Game No. 559. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 559 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$2	1,236,480	8.93
\$4	618,240	17.86
\$5	176,640	62.50
\$8	44,160	250.00
\$10	88,320	125.00
\$12	66,240	166.67
\$20	44,160	250.00
\$50	44,160	250.00
\$200	14,444	764.33
\$1,000	276	40,000.00
\$21,000	11	1,003,636.36

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 4.73. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 559 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 559, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200501455

Kimberly L. Kiplin  
General Counsel  
Texas Lottery Commission  
Filed: April 6, 2005



Instant Game Number 565 "Power Sevens"

1.0 Name and Style of Game.

A. The name of Instant Game No. 565 is "POWER SEVENS". The play style is "key number match with tripler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 565 shall be \$7.00 per ticket.

1.2 Definitions in Instant Game No. 565.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: \$1.00, \$2.00, \$5.00, \$7.00, \$10.00, \$11.00, \$20.00, \$27.00, \$50.00, \$77.00, \$100, \$1,000, \$7,000, \$77,000, 7 SYMBOL, GOLD BAR SYMBOL,

MONEY BAG SYMBOL, STACK OF BILLS SYMBOL, STAR SYMBOL, TAILS SYMBOL, HEADS SYMBOL, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 30, 31, 32, 33, 34, 35, 36, 38, 39, and 40.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 565 - 1.2D

PLAY SYMBOL	CAPTION
\$1.00	ONE\$
\$2.00	TWO\$
\$5.00	FIVE\$
\$7.00	SEVEN\$
\$10.00	TEN\$
\$11.00	ELEVEN
\$20.00	TWENTY
\$27.00	TWY SVN
\$50.00	FIFTY
\$77.00	SVY SVN
\$100	ONE HUND
\$1,000	ONE THOU
\$7,000	SVN THOU
\$77,000	77 THOU
7 SYMBOL	DOUBLE
GOLD BAR SYMBOL	GOLD
MONEY BAG SYMBOL	\$BAG
STACK OF BILLS SYMBOL	BILLS
STAR SYMBOL	STAR
TAILS SYMBOL	TAILS
HEADS SYMBOL	HEADS
7 SYMBOL	AUTO
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	TRPL
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFO

26	TWSX
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
38	TRET
39	TRNI
40	FRTY

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 565 - 1.2E

CODE	PRIZE
SVN	\$7.00
ELV	\$11.00
SVT	\$17.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of \$7.00, \$11.00, or \$17.00.

H. Mid-Tier Prize - A prize of \$27.00, \$47.00, \$77.00, \$177 or \$577.

I. High-Tier Prize - A prize of \$7,000 or \$77,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (565), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 75 within each pack. The format will be: 565-0000001-001.

L. Pack - A pack of "POWER SEVENS" Instant Game tickets contains 75 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and the back of 075 while the other fold will show the back of ticket 001 and front of 075.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "POWER SEVENS" Instant Game No. 565 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "POWER SEVENS" Instant Game is determined once the latex on the ticket is scratched off to expose 48 (forty-eight) Play Symbols. Game 1: If a player reveals three (3) matching amounts the player wins that amount. If a player reveals two (2) matching amounts and a "7" play symbol the player wins double the amount shown. Game 2: If a player matches any of YOUR SYMBOLS to the LUCKY SYMBOL, the player wins PRIZE shown for that symbol. If a player reveals a "7" play symbol, the player wins PRIZE shown for that symbol instantly. Game 3: If a player matches any of YOUR NUMBERS play symbols to any of the CASH NUMBERS play symbols,

the player wins PRIZE shown for that number. If a player reveals a "7" play symbol, the player wins triple the PRIZE shown for that number.

#### 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 48 (forty-eight) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 48 (forty-eight) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 48 (forty-eight) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.
17. Each of the 48 (forty-eight) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

#### 2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. Game 1: No more than 2 pairs of like play symbols in this game.

C. Game 1: No four or more like play symbols in this game.

D. Game 1: The "7" doubler symbol may appear only once but may be used on both winning and non-winning games.

E. Game 1: When the "7" doubler symbol appears in a winning Game, there will be no more than two like play symbols in this game.

F. The \$7 play symbol will only appear in this game when it is part of a win.

G. Game 2: No duplicate non-winning Your Symbols on a ticket.

H. Game 2: No duplicate non-winning prize symbols on a ticket in this game.

I. Game 2: The auto win symbol will appear according to the prize structure and will only appear once in this game.

J. Game 3: No duplicate Cash Numbers play symbols on a ticket.

K. Game 3: The "7" tripler symbol will only appear on winning tickets as dictated by the prize structure.

L. Game 3: No duplicate non-winning Your Number play symbols on a ticket.

#### 2.3 Procedure for Claiming Prizes.

A. To claim a "POWER SEVENS" Instant Game prize of \$7.00, \$11.00, \$17.00, \$27.00, \$47.00, \$77.00, \$177 or \$577, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$27.00, \$47.00, \$77.00, \$177 or \$577 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "POWER SEVENS" Instant Game prize of \$7,000 or \$77,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated



winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "POWER SEVENS" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General; or
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "POWER SEVENS" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "POWER SEVENS" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 4,080,000 tickets in the Instant Game No. 565. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 565 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$7	816,000	5.00
\$11	163,200	25.00
\$17	163,200	25.00
\$27	54,400	75.00
\$47	54,400	75.00
\$77	40,562	100.59
\$177	6,800	600.00
\$577	340	12,000.00
\$7,000	18	226,666.67
\$77,000	6	680,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 3.14. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 565 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 565, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200501437

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Filed: April 5, 2005



#### Instant Game Number 597 "Monthly Bonus"

##### 1.0 Name and Style of Game.

A. The name of Instant Game No. 597 is "MONTHLY BONUS". The play style is "key number match with auto win".

##### 1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 597 shall be \$5.00 per ticket.

##### 1.2 Definitions in Instant Game No. 597.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, DOLLAR BILL SYMBOL, \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$200, \$2,000, \$10,000 and \$20,000.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 597 - 1.2D

<b>PLAY SYMBOL</b>	<b>CAPTION</b>
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
<b>DOLLAR BILL SYMBOL</b>	<b>WIN</b>
\$1.00	ONE\$
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY

\$50.00	FIFTY
\$200	TWO HUND
\$2,000	TWO THOU
\$10,000	MO/20YRS
\$20,000	20 THOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

Figure 2: GAME NO. 597 - 1.2E

CODE	PRIZE
FIV	\$5.00
TEN	\$10.00
TWL	\$12.00
TWN	\$20.00
TFR	\$24.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of \$5.00, \$10.00, \$12.00, \$20.00 or \$24.00.

H. Mid-Tier Prize - A prize of \$50.00, \$60.00 or \$200.

I. High-Tier Prize - A prize of \$2,000, \$20,000 or \$10,000/MO (\$10,000 per month for 20 years).

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (597), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 597-0000001-001.

L. Pack - A pack of "MONTHLY BONUS" Instant Game tickets contains 075 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government

Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "MONTHLY BONUS" Instant Game No. 597 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "MONTHLY BONUS" Instant Game is determined once the latex on the ticket is scratched off to expose 45 (forty-five) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to any of the LUCKY NUMBERS play symbols the player wins prize shown for that number. If a player reveals a dollar bill play symbol the player wins \$10,000 per month for 20 years. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

#### 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 45 (forty-five) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 45 (forty-five) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 45 (forty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.
17. Each of the 45 (forty-five) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

## 2.2 Programmed Game Parameters.

- A. Consecutive non-winning tickets will not have identical play data, spot for spot.
- B. No more than one winner of \$60 and higher per pack.
- C. No duplicate non-winning Your Numbers on a ticket.
- D. No duplicate Lucky Numbers on a ticket.

E. No more than four like non-winning prize symbols on a ticket.

F. A non-winning prize symbol will never be the same as a winning prize symbol.

G. No prize amount in a non-winning spot will correspond with the Your Number play symbol (i.e. 5 and \$5).

H. The "dollar bill" and \$10,000 prize symbol will only appear on intended winning tickets as dictated by the prize structure and will only appear with each other.

## 2.3 Procedure for Claiming Prizes.

A. To claim a "MONTHLY BONUS" Instant Game prize of \$5.00, \$10.00, \$12.00, \$20.00, \$24.00, \$50.00, \$60.00 or \$200, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$50.00, \$60.00 or \$200 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "MONTHLY BONUS" Instant Game prize of \$2,000, \$20,000 or \$10,000/MO (\$10,000 per month for 20 years), the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "MONTHLY BONUS" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. When claiming a "MONTHLY BONUS" Instant Game prize of \$10,000 per month for 20 years, the claimant must choose one of two (2) payment options for receiving his prize:

1. Monthly via direct deposit to the winner's account. With this plan, upon validation of the prize, a payment of \$10,000 less any taxes and/or other offsets or mandatory withholdings required by law, will be made each month on the first business day of the month for a combined total of \$120,000 per year. Monthly payments will be made for a period of 20 years or a total of 240 monthly payments to reach the total maximum payment of "\$2,400, 000".

2. Annually via direct deposit to the winner's account. With this plan, upon validation of the prize, a payment of \$120,000 less any taxes and/or other offsets or mandatory withholdings required by law, will be made once a year on the first business day of the anniversary month

of the claim. Annual payments will be made for a period of 20 years or a total of 20 annual to reach the total maximum payment of \$2,400,000.

5. If a payment falls on a holiday or weekend, the payment will be made on the following business day.

E. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "MONTHLY BONUS" Instant Game, the Texas Lottery shall deliver

to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "MONTHLY BONUS" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 8,040,000 tickets in the Instant Game No. 597. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 597 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$5	1,393,600	5.77
\$10	428,800	18.75
\$12	107,200	75.00
\$20	107,200	75.00
\$24	53,600	150.00
\$50	107,200	75.00
\$60	26,800	300.00
\$200	4,154	1,935.48
\$2,000	80	100,500.00
\$20,000	5	1,608,000.00
\$10,000/MO	2	4,020,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 3.61. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 597 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 597, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200501438  
Kimberly L. Kiplin  
General Counsel  
Texas Lottery Commission  
Filed: April 5, 2005



Instant Game Number 599 "Bonus Break the Bank"

1.0 Name and Style of Game.

A. The name of Instant Game No. 599 is "BONUS BREAK THE BANK". The play style is "key number match with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 599 shall be \$5.00 per ticket.

1.2 Definitions in Instant Game No. 599.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, STACK OF BILLS SYMBOL, \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$15.00, \$20.00, \$25.00, \$50.00, \$100, \$500, \$1,000, \$7,500 or \$75,000.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 599 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
STACK OF BILLS SYMBOL	WIN\$
\$1.00	ONE\$
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$



\$15.00	FIFTN
\$20.00	TWENTY
\$25.00	TWY FIV
\$50.00	FIFTY
\$100	ONE HUND
\$500	FIV HUND
\$1,000	ONE THOU
\$7,500	75 HUND
\$75,000	75 THOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify

and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

**Figure 2: GAME NO. 599 - 1.2E**

CODE	PRIZE
FIV	\$5.00
TEN	\$10.00
FTN	\$15.00
TWN	\$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of \$5.00, \$10.00, \$15.00, or \$20.00.

H. Mid-Tier Prize - A prize of \$50.00, \$100 or \$500.

I. High-Tier Prize - A prize of \$1,000, \$7,500 or \$75,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (599), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 599-0000001-001.

L. Pack - A pack of "BONUS BREAK THE BANK" Instant Game tickets contains 75 tickets, packed in plastic shrink-wrapping and fan-folded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "BONUS BREAK THE BANK" Instant Game No. 599 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "BONUS BREAK THE BANK" Instant Game is determined once the latex on the ticket is scratched off to expose 38 (thirty-eight) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to any of the LUCKY NUMBERS play symbols within the same game the player wins prize indicated for that number. If a player reveals a money stack play symbol the player wins prize indicated automatically. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 38 (thirty-eight) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 38 (thirty-eight) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 38 (thirty-eight) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.
17. Each of the 38 (thirty-eight) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

## 2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No duplicate non-winning Your Numbers on a ticket.

C. No duplicate Lucky Numbers on a ticket.

D. No more than four like non-winning prize symbols on a ticket.

E. A non-winning prize symbol will never be the same as a winning prize symbol.

F. No prize amount in a non-winning spot will correspond with the Your Number play symbol (i.e. 5 and \$5).

G. The auto win symbol will never appear more than once in a game, but may appear once in both games on tickets that win 2 or more times.

H. No Your Number play symbol in one game will match a Lucky Number play symbol in the other game.

## 2.3 Procedure for Claiming Prizes.

A. To claim a "BONUS BREAK THE BANK" Instant Game prize of \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$50.00, \$100 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "BONUS BREAK THE BANK" Instant Game prize of \$1,000, \$7,500 or \$75,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "BONUS BREAK THE BANK" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "BONUS BREAK THE BANK" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "BONUS BREAK THE BANK" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 8,040,000 tickets in the Instant Game No. 599. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 599 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$5	1,500,800	5.36
\$10	536,000	15.00
\$15	214,400	37.50
\$20	107,200	75.00
\$50	107,200	75.00
\$100	20,100	400.00
\$500	1,072	7,500.00
\$1,000	201	40,000.00
\$7,500	24	335,000.00
\$75,000	11	730,909.09.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 3.23. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 599 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 599, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200501439

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Filed: April 5, 2005

## Manufactured Housing Division

Notice of Public Hearing (Hearing Date: May 17, 2005)

Notice is hereby given of a public hearing to be held by the Manufactured Housing Division of the Texas Department of Housing and Community Affairs (the "Department") at 9:00 a.m. on Tuesday, May 17, 2005 at 507 Sabine Street, 4th Floor Boardroom, Austin, Texas 78701. The public hearing is to accept comments on proposed amendments to Title 10 Texas Administrative Code, Chapter 80 (West) ("Rules"), §80.201. The proposed rules are published in the April 15, 2005 issue of the *Texas Register*.

All interested parties are invited to attend such public hearing to express their views with respect to the proposed amendments to the manufactured housing rules. Questions or requests for additional information may be directed to Sharon S. Choate at the Manufactured Housing Division of the Texas Department of Housing and Community Affairs, 507 Sabine Street, 10th Floor, Austin, Texas 78701, telephone (512) 475-2206, or email at sharon.choate@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Sharon S. Choate in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their comments in writing to Sharon S. Choate prior to the date scheduled for the hearing. Written comments may be sent to the Manufactured Housing Division of the Texas Department of Housing and Community Affairs, P. O. Box 12489, Austin, Texas 78711-2489, faxed to (512) 475-4250, or emailed to sharon.choate@tdhca.state.tx.us.

This notice is published and the above described hearing is to be held in satisfaction of the requirements of the Texas Manufactured Housing Standards Act, Occupations Code, Subtitle C, Chapter 1201 and Title 10 Texas Administrative Code (West).

Individuals who require auxiliary aids for this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943, or Relay Texas at 1 (800) 735-2989 at least two days prior to the meeting so that appropriate arrangements can be made.

TRD-200501386

Timothy K. Irvine

Executive Director

Manufactured Housing Division

Filed: April 4, 2005

## North Central Texas Council of Governments

Request for Proposals to Conduct Thoroughfare Assessment Program in the Dallas-Fort Worth Metropolitan Area

This request by the North Central Texas Council of Governments (NCTCOG) for consultant services is filed under the provisions of Government Code, Chapter 2254.

The North Central Texas Council of Governments (NCTCOG) is requesting written proposals to conduct Thoroughfare Assessment Program in the Dallas-Fort Worth Metropolitan Area. The Program will maximize the capacity of the existing arterial system by implementing low-cost capital improvements on selected thoroughfares. The selected consultant (s) will implement a Thoroughfare Assessment Program to audit selected thoroughfares, assess operational characteristics, and develop and implement recommended improvements. Engineering services will be required as part of this project and multiple consultant firms may be selected to perform the required tasks. The selected consultant (s) shall establish a detailed data collection plan to cover approximately 260 locations. The data collection for the baseline analysis needs to include an assessment of operational characteristics. The selected consultant (s) should identify specific methodology and procedures to analyze the baseline conditions. Types of assessment may include, but are not limited to, review of existing timing plans, adjustments to count data, development of traffic signal timing optimization models, determination of hardware upgrades, and recommendations of low-cost operational improvements.

### Due Date

Proposals must be received no later than 5 p.m. Central Daylight Time on Friday, May 20, 2005, to Natalie Bettger, Principal Transportation Planner, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011 or P.O. Box 5888, Arlington, Texas 76005-5888. For copies of the Request for Proposals, contact Therese Bergeon, at (817) 695-9267. Questions concerning the Instructions For Proposals or the Scope of Services should be submitted to Ken Kirkpatrick, Senior Program Manager, by email at kirkpatrick@nctcog.org by Monday, April 25, 2005. A Pre-Proposal Conference will be held on Monday, May 2, 2005, at 10 a.m. at the NCTCOG offices to provide an overview and answer questions regarding the RFP.

### Contract Award Procedures

The firm or individual selected to perform these activities will be recommended by a Consultant Selection Committee (CSC). The CSC will use evaluation criteria and methodology consistent with the scope of services contained in the Request for Proposals. The NCTCOG Executive Board will review the CSC's recommendations and, if found acceptable, will issue a contract award.

### Regulations

NCTCOG, in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 41 United States Code 2000d to 2000d-4; and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 1, Nondiscrimination in Federally Assisted Programs of the Department of Transportation issued pursuant to such act, hereby notifies all proposers that it will affirmatively assure that in regard to any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, sex, age, national origin, or disability in consideration of an award.

TRD-200501456

R. Michael Eastland  
Executive Director  
North Central Texas Council of Governments  
Filed: April 6, 2005

◆ ◆ ◆  
**Public Utility Commission of Texas**

**Notice of Application for Amendment to Certificated Service Area Boundary**

Notice is given to the public of an application filed on March 31, 2005, with the Public Utility Commission of Texas, for an amendment to a certificated service area boundary.

Docket Style and Number: Application of Southwestern Bell Telephone, L.P. d/b/a SBC Texas to Amend Certificate of Convenience and Necessity to Modify the Service Area Boundaries of the Round Rock Zone of the Austin Metropolitan Exchange (SBC Texas) and the Hutto Exchange (Sprint). Docket Number 30962.

The Application: The minor boundary amendment is being requested to realign the serving area boundaries between the Hutto and Round Rock exchanges to reflect the way the boundary is currently being administered. There will be no changes in service, rates, or telephone numbers for existing customers. Sprint has provided a letter of concurrence for the proposed change.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by April 25, 2005, by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 30962.

TRD-200501452  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: April 6, 2005

◆ ◆ ◆  
**Notice of Application for Service Provider Certificate of Operating Authority**

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on March 25, 2005, for a service provider certificate of operating authority (SPCOA), pursuant to Public Utility Regulatory Act (PURA) §§54.151 - 54.156. A summary of the application follows.

Docket Title and Number: Application of InnerCity FiberNet, LLC for a Service Provider Certificate of Operating Authority, Docket Number 30923 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, HDSL, SDSL, VDSL, Optical Services, T1-Private Line, long distance, DS3, Ethernet, Fast Ethernet, GigE, and Internet Transit.

Applicant's requested SPCOA geographic area includes the entire State of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at

1-888-782-8477 no later than April 20, 2005. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 30923.

TRD-200501360  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: March 30, 2005

◆ ◆ ◆  
**Notice of Application to Relinquish a Service Provider Certificate of Operating Authority**

On March 25, 2005, Dynamic Cable Construction, Incorporated filed an application with the Public Utility Commission of Texas (commission) to relinquish its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60343. Applicant intends to relinquish its certificate.

The Application: Application of Dynamic Cable Construction, Inc. to Relinquish its Service Provider Certificate of Operating Authority, Docket Number 30922.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than April 20, 2005. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 30922.

TRD-200501358  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: March 30, 2005

◆ ◆ ◆  
**Notice of Application to Relinquish a Service Provider Certificate of Operating Authority**

On March 28, 2005, Texas Am-Tel I, LP filed an application with the Public Utility Commission of Texas (Commission) to relinquish its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60483. Applicant intends to relinquish its certificate.

The Application: Application of Texas Am-Tel I, LP to Relinquish its Service Provider Certificate of Operating Authority, Docket Number 30924.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than April 20, 2005. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 30924.

TRD-200501359  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: March 30, 2005

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**Notice of Application to Relinquish a Service Provider  
Certificate of Operating Authority**

On March 31, 2005, Madison River Communications, L.L.C. filed an application with the Public Utility Commission of Texas (commission) to relinquish its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60371. Applicant intends to relinquish its certificate.

The Application: Application of Madison River Communications, L.L.C. to Relinquish its Service Provider Certificate of Operating Authority, Docket Number 30961.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than April 20, 2005. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 30961.

TRD-200501451  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: April 6, 2005



**Notice of Intent to File LRIC Study Pursuant to P.U.C.  
Substantive Rule §26.214**

Notice is given to the public of the filing on March 30, 2005, with the Public Utility Commission of Texas (commission), a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.214. The Applicant will file the LRIC study on or around April 22, 2005.

Docket Title and Number: Central Telephone Company of Texas, Incorporated, doing business as Sprint Application for Approval of LRIC Study to Introduce Private Switch Database Service (PS/ALI) and Reverse Notification Telephone Number Database Service Pursuant to P.U.C. Substantive Rule §26.214, Docket Number 30936.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 30936. Written comments or recommendations should be filed no later than 45 days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 30936.

TRD-200501368  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: March 31, 2005



**Notice of Intent to File LRIC Study Pursuant to P.U.C.  
Substantive Rule §26.214**

Notice is given to the public of the filing on March 30, 2005, with the Public Utility Commission of Texas (commission), a notice of intent

to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.214. The Applicant will file the LRIC study on or around April 22, 2005.

Docket Title and Number: United Telephone Company of Texas, Incorporated doing business as Sprint Application for Approval of LRIC Study to Introduce Private Switch Database Service (PS/ALI) and Reverse Notification Telephone Number Database Service Pursuant to P.U.C. Substantive Rule §26.214, Docket Number 30937.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 30937. Written comments or recommendations should be filed no later than 45 days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 30937.

TRD-200501369  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: March 31, 2005



**Notice of Intent to File LRIC Study Pursuant to P.U.C.  
Substantive Rule §26.214**

Notice is given to the public of the filing on March 30, 2005, with the Public Utility Commission of Texas (commission), a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.214. The Applicant will file the LRIC study on or around April 21, 2005.

Docket Title and Number: United Telephone Company of Texas, Incorporated, doing business as Sprint Application for Approval of LRIC Study to Introduce Economy Bundle II A Pursuant to P.U.C. Substantive Rule §26.214, Docket Number 30938.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 30938. Written comments or recommendations should be filed no later than 45 days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 30938.

TRD-200501370  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: March 31, 2005



**Notice of Intent to File LRIC Study Pursuant to P.U.C.  
Substantive Rule §26.214**

Notice is given to the public of the filing on March 30, 2005, with the Public Utility Commission of Texas (commission), a notice of intent

to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.214. The Applicant will file the LRIC study on or around April 21, 2005.

Docket Title and Number: Central Telephone Company of Texas, Incorporated, doing business as Sprint Application for Approval of LRIC Study to Introduce Economy Bundle II A Pursuant to P.U.C. Substantive Rule §26.214, Docket Number 30939.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 30939. Written comments or recommendations should be filed no later than 45 days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 30939.

TRD-200501371

Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: March 31, 2005



Petition of Billie B. Mosites for a Declaratory Order Enforcing the Order of the Public Utility Commission of Texas Granting Brazos Electric Cooperative, Inc. a Certificate of Convenience and Necessity for a 138-kV Transmission Line in Hood and Parker Counties

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) a petition on March 30, 2005, for a declaratory order.

Docket Style and Number: Petition of Billie B. Mosites for a Declaratory Order Enforcing the Order of the Public Utility Commission of Texas Granting Brazos Electric Cooperative, Incorporated a Certificate of Convenience and Necessity for a 138-kV Transmission Line in Hood and Parker Counties, Docket Number 30945.

The Application: Petitioner requests that the commission (1) declare the rights and obligations established in the commission's Order in Docket Number 28254 with regard to Petitioner's property; (2) clarify any inconsistencies in its Order of August 24, 2004; (3) order Brazos to cease and desist in its effort to enter Petitioner's property for the ultimate purpose of constructing a transmission line along a route never approved by the commission; and (4) order Brazos to comply with the transmission line route modifications requested by Petitioner and approved in the commission's Order in Docket Number 28254 on August 24, 2004.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 30945.

TRD-200501384

Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: April 1, 2005



## **Texas A&M University, Board of Regents**

### **Professional Services Contract Award**

In compliance with the provisions of Chapter 2254, Subchapter B, Texas Government Code, The Texas A&M University System furnishes this notice of professional services contract award. The company will provide workers' compensation medical bill audit and medical claims management services for The Texas A&M University System. The request for proposal was filed in the October 22, 2004 issue of the *Texas Register* (29 TexReg 9938).

The contract was awarded to Starr Comprehensive Solutions, Inc., 7035 W. Tidwell, Suite J-107, Houston, Texas 77092 (P.O. Box 801464, Houston, Texas 77280-1464) for \$150,000 annually.

The beginning date of the contract is March 23, 2005 and the ending date is March 23, 2008. All services are provided on an ongoing, as-needed basis.

Please call Kevin P. McGinnis, Director of Risk Management, The Texas A&M University System, (979) 458-6330 if you have questions or need further information.

TRD-200501422

Vickie Burt Spillers  
Executive Secretary to the Board  
Texas A&M University, Board of Regents  
Filed: April 5, 2005



## **Texas Water Development Board**

### **Applications Received**

Pursuant to the Texas Water Code, §6.195, the Texas Water Development Board provides notice of the following applications received by the Board:

City of Point, P.O. Box 331, Point, Texas 75471-0331, received January 20, 2005, application for financial assistance in the amount of \$1,370,000 from the Clean Water State Revolving Fund.

Aquilla Water Supply Corporation, P.O. Box 959, Hillsboro, Texas 76645, received February 1, 2005, application for financial assistance in the total amount of \$6,730,000 from the Texas Water Development Funds and Rural Water Assistance Fund.

City of Marlin, 100 Fortune Street, P.O. Box 980, Marlin, Texas 76661-0980, received December 20, 2004, application for financial assistance in the total amount of \$14,855,000 from the Clean Water State Revolving Fund - Disadvantaged Community Program and the Drinking Water State Revolving Fund - Disadvantaged Community Program.

Lower Neches Valley Authority, P.O. Box 5117, Beaumont, Texas 77726-5117, received January 28, 2005, application for financial assistance in the amount of \$200,000 from the Agricultural Water Conservation Fund.

Sandy Land Underground Water Conservation, P.O. Box 130, Plains, Texas 79355, received February 14, 2005, application for financial assistance in the amount of \$41,093 from the Agricultural Water Conservation Fund.

Tule Creek Soil and Water Conservation District No. 110, 215 NW 2nd Street, Tulia, Texas 79088, received January 31, 2005, application for financial assistance in the amount of \$1,050 from the Agricultural Water Conservation Fund.

Clear Fork Groundwater Conservation District, P.O. Box 369, Ruby, Texas 79543, received February 14, 2005, application for financial assistance in the amount of \$8,106 from the Agricultural Water Conservation Fund.

Coastal Bend Groundwater Conservation District, P.O. Box 341, Harton, Texas 77488, received February 8, 2005, application for financial assistance in the amount of \$50,000 from the Agricultural Water Conservation Fund.

Post Oak Savannah Ground Water Conservation District, P.O. Box 92, Milano, Texas 76556, received February 14, 2005, application for financial assistance in the amount of \$6,562 from the Agricultural Water Conservation Fund.

Pecan Bayou Soil and Water Conservation District, P.O. Box 562, Brownwood, Texas 76804, received February 11, 2005, application for financial assistance in the amount of \$39,750 from the Agricultural Water Conservation Fund.

Uvalde County Underground Water Conservation District, P.O. Box 1419, Uvalde, Texas 78802-1410, received February 11, 2005, application for financial assistance in the amount of \$60,000 from the Agricultural Water Conservation Fund.

Wintergarden Ground Water Conservation District, P.O. Box 1433, Carrizo Springs, Texas 78834, received February 11, 2005, application for financial assistance in the amount of \$54,000 from the Agricultural Water Conservation Fund.

Adams Garden Irrigation District No. 19, P.O. Box 148, Harlingen, Texas 78551, received February 14, 2005, application for financial assistance in the amount of \$50,000 from the Agricultural Water Conservation Fund.

Delta Lake Irrigation District, Route 1 Box 225, Edcouch, Texas 78538, received February 14, 2005, application for financial assistance in the amount of \$50,000 from the Agricultural Water Conservation Fund.

El Paso Water Improvement District No. 1,294 Candelaria, El Paso, Texas 79907-5599, received February 14, 2005, application for financial assistance in the amount of \$50,000 from the Agricultural Water Conservation Fund.

Hudspeth County Conservation and Reclamation District No. 1, P.O. Box 125, Fort Hancock, Texas 79839, received February 14, 2005, application for financial assistance in the amount of \$50,000 from the Agricultural Water Conservation Fund.

Hudspeth County Underground Water Conservation District No. 1, P.O. Box 212, Dell City, Texas 79837, received February 14, 2005, application for financial assistance in the amount of \$50,000 from the Agricultural Water Conservation Fund.

Texas Agricultural Extension Service, Jack K. Williams Administration Building, Room 113, College Station, Texas 77843-2142, received February 9, 2005, application for financial assistance in the amount of \$45,000 from the Agricultural Water Conservation Fund.

Texas Agricultural Extension Service, Jack K. Williams Administration Building, Room 113, College Station, Texas 77843-2142, received February 8, 2005, application for financial assistance in the amount of \$85,265 from the Agricultural Water Conservation Fund.

Texas Agricultural Extension Service, Jack K. Williams Administration Building, Room 113, College Station, Texas 77843-2142, received

February 14, 2005, application for financial assistance in the amount of \$150,000 from the Agricultural Water Conservation Fund.

Texas Cooperative Extension, 6500 Amarillo Blvd., West Amarillo, Texas 79106, received February 14, 2005, application for financial assistance in the amount of \$100,000 from the Agricultural Water Conservation Fund.

Texas State Soil and Water Conservation Board, P.O. Box 658, Temple, Texas 76503, received February 14, 2005, application for financial assistance in the amount of \$100,000 from the Agricultural Water Conservation Fund.

TRD-200501453

Suzanne Schwartz

General Counsel

Texas Water Development Board

Filed: April 6, 2005

## The University of Texas System

### Request for Proposal - Consulting Services

The University of Texas-Pan American (the "University") requests, pursuant to *Texas Government Code* 2254.029, the submission of proposals leading to the award of a contract for consulting services. The University is located in the Lower Rio Grande Valley and covers about 187 acres in Edinburg, Texas, the Hidalgo County seat with a population of about 32,000.

The University is looking for a Proposer to provide the assistance the University requires to review and assess the current compensation and classification program for approximately 200 classified and non-classified jobs, including faculty positions.

The University's President made a finding that the Consulting Services are necessary. While the University has a substantial need for the Consulting Services, the University does not currently have staff with expertise or experience with the Consulting Services and the University cannot obtain such Consulting Services through a contract with another state governmental entity.

An award for the services will be following a procedure using competitive sealed proposals based on the following evaluation criteria:

1. The Proposer's demonstrated competence, knowledge and experience in conducting numerous compensation surveys across industry groups, especially higher education & compensation program design and development for both the public and private sector. Experience must include development, implementation, and communication of salary grade structures. Proposer must demonstrate possession of sufficient market pricing resources including data processing capabilities or information systems to appropriately evaluate the full range of University positions.
2. The qualifications, education and experience of the Proposer's team members that will actually conduct and supervises the consulting services to be provided to the University.
3. The number of team members dedicated to the project, resources available, and ability to deliver within the time frame prescribed.
4. The overall cost to the University for the services to be performed by the Proposer.
5. Proposer's approach to perform the consulting services.
6. Completeness and quality of Proposer's responses to the requests for information and questions contained in Appendix One of the RFP, and demonstrated development, performance, completion, implementation



and communication of salary compensation models in a higher education setting.

The individual to be contacted with an offer to provide such consulting services or to obtain a copy of the Request for Proposals for the consulting services identified in this invitation is:

Norma Dryer

Contracts Coordinator

The University of Texas-Pan American

1201 W. University Dr.

Edinburg, TX 78541

Voice: (956) 381-2160

Email: dryern@utpa.edu

The proposal submission deadline will be April 29, 2005 at 3:00 pm Central Prevailing Time.

TRD-200501457

Francie A. Frederick

Counsel and Secretary to the Board

The University of Texas System

Filed: April 6, 2005



#### Request for Proposal - Consulting Services

The United States Department of Energy (DOE) announced an intent to seek competitive bids for the contract to manage the Los Alamos National Laboratory when that contract expires in 2005 and has recently issued a revised draft Request for Proposals. In January 2002, the University of Texas System (U. T. System), secured the consulting services of Kelly, Anderson and Associates, Inc. to advise it on DOE procurement procedures, procedures for the selection of potential industrial partners, and the process required for preparation of a bid package that would be responsive to a DOE Invitation to Bid on a National Laboratory management contract.

Pursuant to a contract with U. T. System; Kelly, Anderson and Associates, Inc. is currently providing such consulting services to the System. At this time, it is necessary to amend the contract between U. T. System and Kelly, Anderson and Associates, Inc.

As required by the provisions of *Texas Government Code*, Chapter 2254, prior to amending its contract with Kelly, Anderson and Associates, Inc., U. T. System extends this invitation to qualified and experienced consultants interested in providing the consulting services described in this invitation. Unless a better offer (as determined by U. T. System) is received in response to this invitation, U. T. System intends to enter into negotiations with Kelly, Anderson and Associates, Inc., to amend U. T. System's contract with Kelly, Anderson and Associates, Inc.

#### Scope of Work:

The successful consultant shall provide advice and assistance regarding DOE procurement procedures and competition for the Los Alamos National Laboratory management contract.

#### Finding of Fact:

The Chancellor of U. T. System has made a finding that the consulting services are necessary. U. T. System does not currently have staff with expertise in Los Alamos National Laboratory contract issues, DOE procurement procedures or expertise in how to assemble a competitive DOE bid to manage a national laboratory.

#### Specifications:

Any consultant submitting an offer in response to this Invitation must provide the following: (1) consultant's legal name, including type of entity (individual, partnership, corporation, etc.), and address; (2) background information regarding the consultant, including the number of years in business and the number of employees; (3) information regarding the qualifications, education, and experience of the team members proposed to conduct the requested services; (4) the hourly rate to be charged for each team member providing services; (5) the earliest date by which the consultant could begin providing the services; (6) a list of five client references, including any complex institutions or systems of higher education for which consultant has provided consulting services; (7) a statement of consultant's approach to the project (i.e., the services described in the Scope of Work section of this Invitation), any unique benefits consultant offers U. T. System, and any other information consultant desires U. T. System to consider in connection with consultant's offer; (8) information to assist U. T. System in assessing consultant's demonstrated competence and experience providing consulting services similar to the services requested in this Invitation; (9) information to assist U. T. System in assessing the consultant's knowledge of Los Alamos National Laboratory contract issues, DOE procurement processes and strategies for competitive bidding for a national laboratory contract; and (10) information to assist U. T. System in assessing whether the consultant will have any conflicts of interest in performing the requested services.

#### Selection Process:

Selection of the Successful Offer (defined as follows) submitted in response to this Invitation by the Submittal Deadline (defined as follows) will be made using the competitive process described as follows. After the opening of the offers and upon completion of the initial review and evaluation of the offers submitted, selected consultants may be invited to participate in oral presentations. U. T. System, on the basis of the offers initially submitted, without discussion, clarification or modification, may make the selection of the Successful Offer. In the alternative, U. T. System on the basis of negotiation may make selection of the Successful Offer with any of the consultants. At U. T. System's sole option and discretion, it may discuss and negotiate all elements of the offers submitted by selected consultants within a specified competitive range. For purposes of negotiation, a competitive range of acceptable or potentially acceptable offers may be established comprising the highest rated offers. U. T. System will provide each consultant within the competitive range with an equal opportunity for discussion and revision of its offer. U. T. System will not disclose any information derived from the offers submitted by competing consultants in conducting such discussions. Further action on offers not included within the competitive range will be deferred pending the selection of the Successful Offer; however, U. T. System reserves the right to include additional offers in the competitive range if deemed to be in its best interest. After the submission of offers but before final selection of the Successful Offer is made, U. T. System may permit a consultant to revise its offer in order to obtain the consultant's best final offer. U. T. System is not bound to accept the lowest priced offer if that offer is not in its best interest, as determined by U. T. System. U. T. System reserves the right to (a) enter into agreements or other contractual arrangements for all or any portion of the Scope of Work set forth in this Invitation with one or more consultants, (b) reject any and all offers and re-solicit offers or (c) reject any and all offers and temporarily or permanently abandon this procurement, if deemed to be in the best interest of U. T. System.

#### Criteria for Selection:

The Successful Offer will be the offer submitted in response to this Invitation by the Submittal Deadline that is the most advantageous to U. T. System, considering price and the evaluation factors established

by U. T. System. U. T. System personnel will evaluate offers. The evaluation of offers and the selection of the Successful Offer will be based on the information provided to U. T. System by the consultant in response to the Specifications section of this Invitation. Consideration may also be given to any additional information and comments if such information or comments increase the benefits to U. T. System.

#### How To Respond; Submittal Deadline:

All offers must contain the information requested in the Specifications section of this Invitation and be received no later than 5:00 p.m., C.S.T., Friday, May 6, 2005. Submissions received after the deadline will not be considered. Offers must be submitted to Dr. Charles A. Sorber, The University of Texas System, 601 Colorado St., Austin, Texas 78701.

#### Questions:

Questions concerning this invitation and all offers in response to this request should be directed to Dr. Charles A. Sorber, The University of Texas System, Austin, Texas 78701, 512/499-3776, CSorber@utsystem.edu.

TRD-200501458

Francie A. Frederick

Counsel and Secretary to the Board

The University of Texas System

Filed: April 6, 2005



#### Request for Proposal - Consulting Services

The University of Texas at Austin requests, pursuant to the provisions of the *Texas Government Code*, Chapter 2254.029, the submission of proposals leading to the award of a contract for Consulting Services. The University's objective is to contract for Consulting Services to assist the University in a thorough analysis of the "Funding of the Campus-wide Development Operation."

The conclusion of a major capital campaign represents a critical moment in the history of any major university development program. If this post-campaign period is managed well and resources are appropriately organized, the university should be able to maintain or even exceed its campaign annual fundraising totals. An assessment can provide a roadmap for the President and for new advancement leadership. An assessment can set a framework for a new round of fundraising priority setting and provide a context for post-campaign fundraising goals and activity. The assessment should also incorporate information on other major research institutions that have completed similar capital campaigns.

An award for the services specified herein will be made following a procedure using competitive sealed proposals.

Proposals will be opened publicly to identify the names of the RESPONDENTS, but will be afforded security sufficient to preclude disclosure of the contents of the proposal, including prices or other information, prior to award. After opening, an award may be made on the basis of the proposals initially submitted, without discussion, clarification, or modification, or on the basis of negotiation with any of the RESPONDENTS or, at UNIVERSITY'S sole option and discretion, UNIVERSITY may discuss or negotiate all elements of the proposal with selected RESPONDENTS which represent a competitive range of proposals. For purposes of negotiation, a competitive range of acceptable or potentially acceptable proposals may be established comprising the highest rated proposal(s). After the submission of a proposal but before making an award, UNIVERSITY may permit the offeror to revise the proposal in order to obtain the best final offer. UNIVERSITY may not disclose any information derived from the proposals submitted

from competing offers in conducting such discussions. UNIVERSITY will provide each offeror with an equal opportunity for discussion and revision of proposals. Further action on proposals not included in the competitive range will be deferred pending an award, but UNIVERSITY reserves the right to include additional proposals in the competitive range if deemed in the best interest of UNIVERSITY. UNIVERSITY reserves the right to award a Contract for all or any portion of the requirements proposed by reason of this request, award multiple Contracts, or to reject any and all proposals if deemed to be in the best interests of UNIVERSITY and to re-solicit for proposals, or to reject any and all proposals if deemed to be in the best interests of UNIVERSITY and to temporarily or permanently abandon the procurement. If UNIVERSITY awards a contract, it will award the contract to the offeror whose proposal is the most advantageous to UNIVERSITY, considering price and the evaluation factors set forth in this RFP. The contract file must state in writing the basis upon which the award is made.

Interested parties may contact Floyd Self at The University of Texas at Austin Purchasing Office for a copy of the RFP document by email at fsself@mail.utexas.edu; telephone (512) 471-4266. An original and five (5) copies of the proposal must be submitted by the Proposal submission deadline of May 10, 2005 at 2:30 P.M., Central Standard Daylight Time, Austin Texas to Mr. Floyd Self, The University of Texas at Austin, Purchasing Office, 2200 Comal Street, Austin TX 78722

TRD-200501459

Francie A. Frederick

Counsel and Secretary to the Board

The University of Texas System

Filed: April 6, 2005



#### Texas Workers' Compensation Commission

##### Invitation to Apply to the Medical Advisory Committee (MAC)

The Texas Workers' Compensation Commission seeks to have a diverse representation on the MAC and invites all qualified individuals from all regions of Texas to apply for openings on the MAC in accordance with the eligibility requirements of the Procedures and Standards for the Medical Advisory Committee. The Medical Review Division is currently accepting applications for the following Medical Advisory Committee vacancies:

##### Primary

- \* Dentist
- \* Employer
- \* General Public 1

##### Alternate

- \* Public Health Care Facility Representative
- \* Dentist
- \* Pharmacist,
- \* Employer
- \* General Public 1
- \* Insurance Carrier

Commissioners for the Texas Workers' Compensation Commission appoint the Medical Advisory Committee members who are composed of 18 primary and 18 alternate members representing health care providers, employees, employers, insurance carriers, and the general public. Primary members are required to attend all Medical Advisory Committee meetings, subcommittee meetings, and work group

meetings to which they are appointed. The alternate member may attend all meetings, however during a primary member's absence, the alternate member must attend all meetings to which the primary member is appointed. Requirements and responsibilities of members are established in the Procedures and Standards for the Medical Advisory Committee as adopted by the Commission.

The Medical Advisory Committee meetings must be held at least quarterly each fiscal year during regular Commission working hours. Members are not reimbursed for travel, per diem, or other expenses associated with Committee activities and meetings.

The purpose and task of the Medical Advisory Committee, which includes advising the Commission's Medical Review Division on the development and administration of medical policies, rules and guidelines, are outlined in the Texas Workers' Compensation Act, §413.005.

Applications and other relevant Medical Advisory Committee information may be viewed and downloaded from the Commission's website at <http://www.twcc.state.tx.us> and then clicking on Calendar of Commission Meetings, Medical Advisory Committee. Applications may also be obtained by calling Jane McChesney, MAC Coordinator, at 512-804-4855 or R. L. Shipe, Director, Medical Review, at 512-804-4802.

The qualifications as well as the terms of appointment for all positions are listed in the Procedures and Standards for the Medical Advisory Committee. These Procedures and Standards are as follows:

**LEGAL AUTHORITY.** The Medical Advisory Committee for the Texas Workers' Compensation Commission, Medical Review Division is established under the Texas Workers' Compensation Act, (the Act) §413.005.

**PURPOSE AND ROLE.** The purpose of the Medical Advisory Committee (MAC) is to bring together representatives of health care specialties and representatives of labor, business, insurance and the general public to advise the Medical Review Division in developing and administering the medical policies, fee guidelines, and the utilization guidelines established under §413.011 of the Act.

**COMPOSITION Membership.** The composition of the committee is governed by the Act, as it may be amended. Members of the committee are appointed by the Commissioners and must be knowledgeable and qualified regarding work-related injuries and diseases.

Members of the committee shall represent specific health care provider groups and other groups or interests as required by the Act, as it may be amended. As of September 1, 2001, these members include a public health care facility, a private health care facility, a doctor of medicine, a doctor of osteopathic medicine, a chiropractor, a dentist, a physical therapist, a podiatrist, an occupational therapist, a medical equipment supplier, a registered nurse, and an acupuncturist. Appointees must have at least six (6) years of professional experience in the medical profession they are representing and engage in an active practice in their field.

The Commissioners shall also appoint the other members of the committee as required by the Act, as it may be amended. An insurance carrier representative may be employed by: an insurance company; a certified self-insurer for workers' compensation insurance; or a governmental entity that self-insures, either individually or collectively. An insurance carrier member may be a medical director for the carrier but may not be a utilization review agent or a third party administrator for the carrier.

A health care provider member, or a business the member is associated with, may not derive more than 40% of its revenues from workers compensation patients. This fact must be certified in their application to the MAC.

The representative of employers, representative of employees, and representatives of the general public shall not hold a license in the health care field and may not derive their income directly from the provision of health care services.

The Commissioners may appoint one alternate representative for each primary member appointed to the MAC, each of whom shall meet the qualifications of an appointed member.

**Terms of Appointment:** Members serve at the pleasure of the Commissioners, and individuals are required to submit the appropriate application form and documents for the position. The term of appointment for any primary or alternate member will be two years, except for unusual circumstances (such as a resignation, abandonment or removal from the position prior to the termination date) or unless otherwise directed by the Commissioners. A member may serve a maximum of two terms as a primary, alternate or a combination of primary and alternate member. Terms of appointment will terminate August 31 of the second year following appointment to the position, except for those positions that were initially created with a three-year term. For those members who are appointed to serve a part of a term that lasts six (6) months or less, this partial appointment will not count as a full term.

Abandonment will be deemed to occur if any primary member is absent from more than two (2) consecutive meetings without an excuse accepted by the Medical Review Division Director. Abandonment will be deemed to occur if any alternate member is absent from more than two (2) consecutive meetings which the alternate is required to attend because of the primary member's absence without an excuse accepted by the Medical Review Division Director.

The Commission will stagger the August 31st end dates of the terms of appointment between odd and even numbered years to provide sufficient continuity on the MAC.

In the case of a vacancy, the Commissioners will appoint an individual who meets the qualifications for the position to fill the vacancy. The Commissioners may re-appoint the same individual to fill either a primary or alternate position as long as the term limit is not exceeded. Due to the absence of other qualified, acceptable candidates, the Commissioners may grant an exception to its membership criteria, which are not required by statute.

**RESPONSIBILITY OF MAC MEMBERS Primary Members.** Make recommendations on medical issues as required by the Medical Review Division.

Attend the MAC meetings, subcommittee meetings, and work group meetings to which they are appointed.

Ensure attendance by the alternate member at meetings when the primary member cannot attend.

Provide other assistance requested by the Medical Review Division in the development of guidelines and medical policies.

**Alternate Members.** Attend the MAC meetings, subcommittee meetings, and work group meetings to which the primary member is appointed during the primary member's absence.

Maintain knowledge of MAC proceedings.

Make recommendations on medical issues as requested by the Medical Review Division when the primary member is absent at a MAC meeting.

Provide other assistance requested by the Medical Review Division in the development of guidelines and medical policies when the primary member is absent from a MAC meeting.

Committee Officers. The chairman of the MAC is designated by the Commissioners. The MAC will elect a vice chairman. A member shall be nominated and elected as vice chairman when he/she receives a majority of the votes from the membership in attendance at a meeting at which nine (9) or more primary or alternate members are present.

Responsibilities of the Chairman. Preside at MAC meetings and ensure the orderly and efficient consideration of matters requested by the Medical Review Division.

Prior to a MAC meeting confer with the Medical Review Division Director, and when appropriate, the TWCC Executive Director to receive information and coordinate:

- a. Preparation of a suitable agenda.
- b. Planning MAC activities.
- c. Establishing meeting dates and calling meetings.
- d. Establishing subcommittees.
- e. Recommending MAC members to serve on subcommittees.

If requested by the Commission, appear before the Commissioners to report on MAC meetings.

COMMITTEE SUPPORT STAFF. The Director of Medical Review will provide coordination and reasonable support for all MAC activities. In addition, the Director will serve as a liaison between the MAC and the Medical Review Division staff of TWCC, and other Commission staff if necessary.

The Medical Review Director will coordinate and provide direction for the following activities of the MAC and its subcommittees and work groups:

- Preparing agenda and support materials for each meeting.
- Preparing and distributing information and materials for MAC use.
- Maintaining MAC records.
- Preparing minutes of meetings.
- Arranging meetings and meeting sites.
- Maintaining tracking reports of actions taken and issues addressed by the MAC.
- Maintaining attendance records.

SUBCOMMITTEES. The chairman shall appoint the members of a subcommittee from the membership of the MAC. If other expertise is needed to support subcommittees, the Commissioners or the Director of Medical Review may appoint appropriate individuals.

WORK GROUPS. When deemed necessary by the Director of Medical Review or the Commissioners, work groups will be formed by the Director. At least one member of the work group must also be a member of the MAC.

WORK PRODUCT. No member of the MAC, a subcommittee, or a work group may claim or is entitled to an intellectual property right in work performed by the MAC, a subcommittee, or a work group.

MEETINGS Frequency of Meetings. Regular meetings of the MAC shall be held at least quarterly each fiscal year during regular Commission working hours.

CONDUCT AS A MAC MEMBER. Special trust has been placed in members of the Medical Advisory Committee. Members act and serve on behalf of the disciplines and segments of the community they represent and provide valuable advice to the Medical Review Division and the Commission. Members, including alternate members, shall observe the following conduct code and will be required to sign a statement attesting to that intent.

Comportment Requirements for MAC Members:

Learn their duties and perform them in a responsible manner;

Conduct themselves at all times in a manner that promotes cooperation and effective discussion of issues among MAC members;

Accurately represent their affiliations and notify the MAC chairman and Medical Review Director of changes in their affiliation status;

Not use their memberships on the MAC: a. in advertising to promote themselves or their business. b. to gain financial advantage either for themselves or for those they represent; however, members may list MAC membership in their resumes;

Provide accurate information to the Medical Review Division and the Commission;

Consider the goals and standards of the workers' compensation system as a whole in advising the Commission;

Explain, in concise and understandable terms, their positions and/or recommendations together with any supporting facts and the sources of those facts;

Strive to attend all meetings and provide as much advance notice to the Texas Workers' Compensation Commission staff, attn: Medical Review Director, as soon as possible if they will not be able to attend a meeting; and

Conduct themselves in accordance with the MAC Procedures and Standards, the standards of conduct required by their profession, and the guidance provided by the Commissioners, Medical Review Division or other TWCC staff.

TRD-200501421  
Susan Cory  
General Counsel  
Texas Workers' Compensation Commission  
Filed: April 5, 2005



### How to Use the Texas Register

**Information Available:** The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

**Governor** - Appointments, executive orders, and proclamations.

**Attorney General** - summaries of requests for opinions, opinions, and open records decisions.

**Secretary of State** - opinions based on the election laws.

**Texas Ethics Commission** - summaries of requests for opinions and opinions.

**Emergency Rules** - sections adopted by state agencies on an emergency basis.

**Proposed Rules** - sections proposed for adoption.

**Withdrawn Rules** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

**Adopted Rules** - sections adopted following public comment period.

**Texas Department of Insurance Exempt Filings** - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

**Texas Department of Banking** - opinions and exempt rules filed by the Texas Department of Banking.

**Tables and Graphics** - graphic material from the proposed, emergency and adopted sections.

**Transferred Rules** - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

**In Addition** - miscellaneous information required to be published by statute or provided as a public service.

**Review of Agency Rules** - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

**How to Cite:** Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 29 (2004) is cited as follows: 29 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "29 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 29 TexReg 3."

**How to Research:** The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online through the Internet. The address is: <http://www.sos.state.tx.us>. The *Register* is available in an .html

version as well as a .pdf (portable document format) version through the Internet. For subscription information, see the back cover or call the Texas Register at (800) 226-7199.

### Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

**How to Cite:** Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15:

1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

**How to update:** To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register* (January 16, April 9, July 9, and October 8, 2004). If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with one or more *Texas Register* page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

*Part I. Texas Department of Human Services*

40 TAC §3.704.....950, 1820

The *Table of TAC Titles Affected* is cumulative for each volume of the *Texas Register* (calendar year).

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